

# Impact Assessment, The Home Office

**Title:** Nationality and Borders Bill  
**IA No:** HO0385      **RPC Reference No:** N/A  
**Other departments or agencies:** Ministry of Justice

**Date:** 22 July 2021

**Stage:** Final

**Intervention:** Domestic

**Measure:** Primary legislation

**Enquiries:**

**RPC Opinion:** Not Applicable

**Business Impact Target:** Not a regulatory provision

## Cost of Preferred (or more likely) Option (in 2021 prices)

<b>Net Present Social Value NPSV (£m)</b>	22.5	<b>Business Net Present Value BNPV (£m)</b>	-0.1	<b>Net cost to business per year EANDCB (£m)</b>	-0.0
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### What is the problem under consideration? Why is government intervention necessary?

The New Plan for Immigration, of which the Nationality and Borders Bill is a key part, is intended to overhaul the UK's asylum system; processes for managing irregular migration; and to build a system which is fair but firm. The reforms aim to continue to provide refuge to those fleeing persecution, oppression, or tyranny, while addressing the distortions and inefficiencies which currently can result in the needs of the vulnerable being overlooked; provide adverse incentives to organised international criminal networks; and present barriers to the removal of those with no basis to remain in the UK. To do this, the Government has to reform the immigration system through legislative change, making changes to the relevant immigration legislation in Parliament.

### What is the strategic objective? What are the main policy objectives and intended effects?

The policy objectives are to: (1) increase the fairness of our system so that we can better protect and support those in need of protection; (2) deter illegal entry into the UK by breaking the business model of people smuggling networks and protecting the lives of those they endanger; (3) return more easily from the UK those with no right to be here. The intended effect is a fair but firm irregular migration system.

### What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

**Option 0:** Do-nothing. No changes made to the UK's approach to irregular migration. This does not meet objectives.

**Option 1:** Full implementation (subject to consideration of the consultation), in which all measures within the New Plan for Immigration programme are introduced. This is **the Government's preferred option** as it meets all the strategic and policy objectives. This appraisal only considers the impact of the Bill measures within the *existing operating system*. It does not consider the impact of the envisaged *fundamental operating system reforms*.

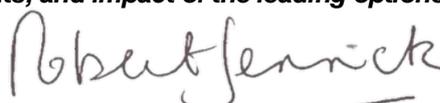
<b>Main assumptions/sensitivities and economic/analytical risks</b>	<b>Discount rate (%)</b>	3.5%
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The anticipated volumes of irregular migrants to the UK following enactment of the programme measures are a major uncertainty and analytical risk. Estimates are based on pre-pandemic and through-pandemic volumes which may not reflect the future. Scenario modelling illustrates the changed state brought about by the Bill measures, including assumptions around returns agreements, but estimates are illustrative and uncertain and volumes and therefore costs and benefits will depend on how Bill and wider measures are implemented and how migrants and other actors respond. While a volumetric scenario encompassing *fundamental operating system reform* is set out, the impacts are assessed within the constraints of the *existing operating system* and as such may under-estimate both costs and benefits of the full range of potential changes under consideration. Other fundamental system reform, operational change and investment along with international agreements may reduce irregular arrivals further and increase returns, thereby reducing the economic cost of irregular migration.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** 05/2027

**I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits, and impact of the leading options.**

Signed by the responsible Minister



Date:

17 October 2023

# Summary: Analysis & Evidence

# Policy Option 1

## Description:

### FULL ECONOMIC ASSESSMENT

Year(s):	Price Base	2021/22	PV Base	2020/21	Appraisal	10	Transition	1
Estimate of Net Present Social Value NPSV (£m)						Estimate of BNPV (£m)		
Low:	-162.9	High:	115.3	Best:	22.5	Best BNPV	-0.1	

COSTS, £m	Transition Constant Price	Ongoing Present Value	Total Present Value	Average/year Constant Price	To Business Present Value
Low*	3.7	314.7	318.1	39.6	0.1
High*	2.5	124.1	126.4	15.8	0.0
Best Estimate	3.1	173.0	175.9	22.0	0.1

\*'Low' represents the low impact scenario for the existing operating system (which has the highest monetised costs), 'High' represents the high impact scenario for the existing operating system (which has the lowest monetised costs).

#### Description and scale of key monetised costs by 'main affected groups'

Costs of the Bill on main affected groups have been monetised for some of the proposed changes, most are public sector familiarisation or admin costs including: increased cost of returns (£45.0m); increased case-working cost from a differentiated asylum system with regular case reviews (£29.3m); additional legal aid costs (£24.8m) and admin and familiarisation costs (of £76.9m) across other measures. Costs are based on implementation within the *existing operating system* and do not reflect investment in operational transformation. There are individual and private sector familiarisation costs of <£0.1m.

#### Other key non-monetised costs by 'main affected groups'

The NPSV figure does not represent all costs and benefits. At this stage, non-monetised costs are largely likely to fall on HM Government agencies, particularly Home Office bodies, as a result of increased costs of processing and enforcement, including changes to asylum accommodation and age assessment. A separate full IA on Electronic Travel Authorisations will be brought forward alongside substantive clause.

BENEFITS, £m	Transition Constant Price	Ongoing Present Value	Total Present Value	Average/year Constant Price	To Business Present Value
Low	N/A	155.2	155.2	19.4	N/A
High	N/A	241.7	241.7	30.2	N/A
Best Estimate	N/A	198.4	198.4	24.8	N/A

#### Description and scale of key monetised benefits by 'main affected groups'

The key monetised benefits appraised within the constraints of the *existing operating system* include a potential public sector cost avoidance benefit from a lower number of individuals entering the Modern Slavery Victims Care Contract - MSVCC (£150.4m). There is also a potential economic benefit of crime averted (£29.5m). Further cost savings from other measures total £18.5m.

#### Other key non-monetised benefits by 'main affected groups'

Benefits fall on the public sector, where – depending on how far the behaviour of irregular migrants is similar to regular migrants - reduced irregular migration may reduce calls on public services or labour market displacement. There may be benefits/dis-benefits through physical and emotional welfare impacts experienced as a result of changes to MSVCC eligibility. Benefits under the *fundamental operating system reform* scenario are likely to be much higher.

### BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m: N/A										
Cost, £m	0.0		Benefit, £m	0.0		Net, £m	-0.0			
Score for Business Impact Target (qualifying provisions only) £m:							0.0			
Is this measure likely to impact on trade and investment?							Y			
Are any of these organisations in scope?			Micro	Y	Small	Y	Medium	Y	Large	Y
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)					Traded:	N/A	Non-Traded:	N/A		

### PEOPLE AND SPECIFIC IMPACTS ASSESSMENT (Option 2)

Are all relevant Specific Impacts included?	N	Are there any impacts on particular groups?	Y
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# Evidence Base

## A. Strategic Overview

### A.1 Strategic Overview

1. The UK's immigration system relating to legal migration has been reformed by the ending of free movement and the introduction of a new points-based immigration system which aims to attract the most talented and highly skilled, regardless of their country of origin. The New Plan for Immigration, of which the Nationality and Borders Bill is a key part, is intended to overhaul the UK's asylum system and processes for managing illegal migration, while also bringing greater fairness to nationality law. The new system aims to build a system which is fair but firm, by continuing to play our role in providing refuge to those fleeing persecution, oppression, or tyranny, while addressing the distortions and inefficiencies which currently can result in the needs of the vulnerable being overlooked, provide incentives to organised international criminal networks, and present barriers to the removal of those with no basis to remain in the UK.
2. The legislative framework for these reforms will be made via the Nationality and Borders Bill. Additional non-legislative measures, as outlined in the New Plan for Immigration are also being implemented but these fall outside of the scope of this Bill and therefore fall outside the main economic appraisal within this IA. A separate IA will be produced for the introduction of Electronic Travel Authorisations (ETAs), given the differences in the evidence base.
3. This Bill has been introduced in tandem with ongoing work on the policy, negotiations on international agreements, Home Office business transformation and planning for changes in the operational approach that taken together are intended to enable wholesale transformation of the existing system. As these further extensive changes are currently being designed or in progress, it is not possible to undertake a meaningful appraisal of the Bill against these wider system reforms. Costs are dependent on agreements, processes and infrastructure that are not yet fully defined.
4. Therefore, the core appraisal looks at the costs and benefits that would be incurred while operating mostly within the *current operating environment* and the constraints this imposes in terms of impact. This therefore provides an illustration of core impacts with which to assess the measures proposed in the Bill. The Home Office have undertaken system modelling of volume impact under these constraints (see annex C). These scenarios are termed '**existing operating system: Low, Medium and High impact**'. The impact of these scenarios are conservative in comparison to the ambition for wider system reform.
5. To help inform public debate and better reflect the Government's ambition for this Bill and some of the wider operational changes the Home Office have also developed an additional illustrative scenario showing the potential volumetric impacts of '**fundamental operating system reform**' (see annex C).

### A.2 Background

6. Illegal migration and asylum claims in the UK are a part of a larger global issue. According to the UNHCR, 79.5 million people are displaced globally. Of these, 26 million are designated refugees

and 4.2 million are asylum seekers<sup>1</sup>. 142,000 illegal border crossings were detected at the external land and sea borders of the EU in 2019, more than half (83,000) of which came through the eastern Mediterranean<sup>2</sup>. Armed conflict, human rights abuse, political instability, poverty, economic instability, violence and threats to personal security are factors known to cause people to be displaced and seek to migrate without a visa or permit to another country. The impact of policy on these movements of people is just one element, alongside other strong drivers such as language, diaspora and journey influences outside migrants' direct control, which factor in a migrant's decision to come to a particular country.

7. Asylum seekers that come through Europe who subsequently make their way to the UK, move between safe countries in which they could be claiming asylum before deciding to claim asylum in the UK – around one in six asylum seekers to the UK in 2019 were matched to asylum claims previously made in another European country.<sup>3</sup>
  - a. In 2019, the UK received the fifth highest number of asylum applications across the EU+, accounting for six per cent of all applications made across Europe.<sup>4,5</sup>
  - b. In 2015-16, over a period referred to as the European “migration crisis”, there was a sizeable increase in irregular arrivals to Europe via its land and sea borders and subsequently a large increase in asylum applications in many European countries. Over the two years, there were almost 2.7 million asylum applications (including dependants) to EU+ countries, almost half of which (45 per cent) were made in Germany.<sup>6</sup> Although the UK saw an increase in asylum applications over the period, the increases were relatively small. More recently, in 2019 asylum applications to the UK rose to a level similar to the numbers seen in 2015-16. The context is now very different as irregular arrivals at the external land and sea borders of Europe are at much lower levels than during the crisis. Some of these more recent increases in applications to the UK appear to stem from secondary movement from migrants already within the EU, rather than recent arrivals to Europe. This is an issue that is affecting many EU Member States and is not unique to the UK.<sup>7</sup>
  - c. Some of those seeking to enter the UK without the permission provided by a visa may therefore have been on the continent of Europe for several years and some may have previously applied for asylum in another country. As already noted, in 2019, around one in six of all asylum applicants to the UK were bio-matched to at least one previous asylum application in another European (EU+) country. Of those who were able to be matched in this way, around a third were first recorded applying for asylum at the time of the European “migration crisis” in 2015/16.<sup>8</sup>
  - d. Notwithstanding the above evidence, the available data suggests that only a small portion of secondary movement across Europe is towards the UK, with the UK asylum intake recording just six per cent of “Eurodac hits” across Europe relating to prior asylum applications elsewhere in Europe in 2019.<sup>9</sup>

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<sup>1</sup> UNHCR (2020) 'Global Returns: Forced Displacement in 2019'

<sup>2</sup> Frontex (2019) 'Migratory Map'. FRAN and JORA data as of February 2021

<sup>3</sup> Internal Home Office Data.

<sup>4</sup> EU+ refers to all countries with free movement including the EU27, Iceland, Lichtenstein, Norway and Switzerland. The UK no longer has free movement but is included as it did in the time of this statistic.

<sup>5</sup> Eurostat (2021b) 'Asylum and first-time asylum applicants by citizenship, age and sex – annual aggregated data (rounded)'. Modified

<sup>6</sup> Eurostat (2021b) 'Asylum and first-time asylum applicants by citizenship, age and sex – annual aggregated data (rounded)'. Modified

<sup>7</sup> Internal Home Office Data

<sup>8</sup> Internal Home Office Data

<sup>9</sup> Eurostat (2021b)

8. The Nationality and Borders Bill has been introduced to tackle issues in the UK's approach to illegal migration and asylum. The Bill is supported by the wider programme of reform, as outlined in the New Plan for Immigration, including the strengthening of safe and legal routes for refugees to settle in the UK, providing an alternative to unsafe and dangerous methods of migration, provisions to support refugee integration into UK society and negotiations of returns agreements with priority countries.
9. Under the proposals set out in the New Plan for Immigration, how someone enters the UK will impact on how a claim progresses through the system and the type of status granted in the UK if that claim is successful. The asylum framework will be streamlined, ensuring cases and appeals are dealt with more effectively, while improving our ability to remove those with no right to remain, including foreign national offenders (FNOs). At the same time, the aim is to strengthen our safe and legal routes, offering protection to refugees fleeing persecution, and fixing historical anomalies in British nationality law.
10. The situation across the asylum and illegal immigration systems is set out below.

### Resettlement

11. The UK has a proud record of helping those facing persecution, oppression, and tyranny. The UK accepted more refugees through planned resettlement schemes than any other country in Europe in the period 2015 to 2019 – the fourth highest number globally after the USA, Canada, and Australia. The UK has resettled almost 25,000 men, women, and children in these five years. Around half of those resettled were under the age of 18 years. This includes refugees resettled through the vulnerable persons resettlement scheme.
12. The UK has also welcomed 29,000 people through the refugee family reunion scheme between 2015 and 2019. More than half of these were also children.
13. The UK has recently introduced a pathway to citizenship for British National Overseas (BN(O)) status holders and their family members facing draconian new security laws in Hong Kong. An estimated 5.4 million people are eligible for this scheme<sup>10</sup>.

### The UK Border

14. In 2019, 32,000 attempts to enter the UK illegally were prevented in northern France. 16,000 illegal arrivals were detected in the UK.<sup>11</sup>
15. Small boat arrivals reached increased levels over the past year, with over 3,700 people arriving in the UK by small boats in the first five months of 2021.<sup>12</sup> Other irregular entry routes declined in 2020 due to the COVID-19 pandemic.
16. Of the 8,500 individuals arriving by small boat in 2020, around three quarters (74%) were aged between 18-39 years and 87 per cent were men.<sup>13</sup>

### Asylum System

17. 2019 saw the highest level of asylum claims (36,000) since the 2015 migration crisis, with a 21 per cent increase in asylum claims compared with the previous year. There were just under

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<sup>10</sup> Home Office (2020) 'Impact Assessment – Hong Kong British National (Overseas) Visa'

<sup>11</sup> Internal Home Office Data

<sup>12</sup> Internal Home Office Data

<sup>13</sup> Internal Home Office Data

30,000 claims in 2020, notwithstanding the impacts of the global pandemic which constrained many people's ability to travel for much of the year.

18. As of mid-2020, there were over 109,000 asylum cases still active in the system. 43,000 cases were awaiting an initial decision, around 5,200 had an asylum appeal outstanding and approximately 41,600 cases were subject to removal action. There were 64,000 individuals on some form of support – cash or accommodation.
19. Changes in the number of asylum cases entering and leaving the system, as well as the time taken to reach a final outcome will affect the overall cost of the asylum system due to the significant cost of supporting asylum seekers, both while their application is considered by the Home Office and over the course of any appeal. The total cost attributed to asylum operations increased from £732 million in 2018-19 to £956 million in 2019-20 and stood at over £1 billion in the last financial year<sup>14</sup>.

### **Judicial System**

20. Seventy per cent of those refused asylum at initial decision go on to appeal to the Immigration and Asylum Chamber of the First-tier Tribunal. Almost half (46%) of all asylum claims received in 2016-2018 in the UK were rejected following consideration of their case by the Home Office and / or subsequent review by the Asylum and Immigration Chamber.
21. In 2019, 9,000 appeals were lodged following an initial asylum claim. Of those determined over the same period, 56 per cent were dismissed.
22. Last year, around 8,000 immigration Judicial Reviews were lodged against the Home Office, 6,500 of which were heard by the Immigration and Asylum Chamber of the Upper-tier Tribunal.
23. Of the approximate 6,000 cases determined on paper, 90 per cent were dismissed or refused and out of these dismissals 17 per cent were classified as "Totally without Merit" by the court.<sup>15</sup>
24. Of the decisions which reached permission hearing, around two-thirds were dismissed.<sup>16</sup> A similar proportion of Judicial Reviews were dismissed by a judge at substantive hearing.<sup>17</sup>

### **Returns**

25. As of 2020, there are 10,000 Foreign National Offenders living in the community, some of whom committed offences in the UK, who cannot be returned to their country of origin.
26. In 2019 new claims, legal challenges or other issues were raised by 73 per cent of people who had been detained within the UK for return following immigration offences. This resulted in release from detention in 94 per cent of cases instead of return from the UK.
27. Relatively few of these claims amounted to a valid reason to remain in the UK. For all issues raised during detention in 2017, 83 per cent were ultimately unsuccessful.
28. Around 41,600 failed asylum seekers are still living in the UK despite having their asylum claim refused.

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<sup>14</sup> Internal Home Office Data

<sup>15</sup> Internal Home Office Data.

<sup>16</sup> Internal Home Office Data.

<sup>17</sup> Internal Home Office Data.

### **A.3 Groups Affected**

**29.** The Bill contains a wide-ranging set of measures that will have far reaching impacts on a variety of agents and mechanisms within the immigration system, including:

- Children of British Overseas Territory Citizens (BOTC).
- Claimants and Irregular Migrants.
- Hauliers and Drivers Responsible for Transporting Goods.
- Port Authorities.
- Non-Visa Nationals visiting the UK.
- Local Authorities.
- Greater London Authority.
- Devolved Administrations.
- Home Office:
  - UK Visas & Immigration.
  - UK Border Force.
  - Immigration Enforcement.
  - The Single Competent Authority (on Modern Slavery).
- Ministry of Justice:
  - HM Courts & Tribunal Service.
  - Legal Aid Agency.
  - HM Prisons and Probation Service.
- Foreign Commonwealth and Development Office.
- Department for Transport.
- Ministry of Housing, Communities and Local Government.
- Department for Health and Social Care.
- Department for Work and Pensions.

### **A.4 Consultation**

#### **Within Government**

**30.** During the development of the New Plan for Immigration, the Home Office worked closely with the Ministry of Justice to ensure that impacts on courts and tribunals, and the prison system, have been duly considered when developing policy.

**31.** Additionally, Home Office worked with other government departments (OGDs) to consider the impacts of policy on their respective portfolios and with the Devolved Administrations (DA) to consider the devolution impacts of policy on the respective DAs.

#### **Public Consultation**

**32.** The Government published a comprehensive improvement plan in response to the Windrush Lessons Learned Review and is resolutely committed to transformative change across the entire Home Office. This means ensuring the New Plan for Immigration is progressed transparently, whilst engaging meaningfully with stakeholders and ensuring equalities impacts are fully assessed.

**33.** A public consultation on the package of measures set out in the New Plan for Immigration ran from 24 March to 6 May, 2021, to obtain views from a range of stakeholders and sectors, as

well as members of the public and those with a lived experience of the asylum and modern slavery systems. The approach to the consultation was extensive, offering multiple ways to engage to ensure the needs and preferences of a wide range of participants could be addressed. Activities included:

- a. An online portal, where stakeholders and members of the public could register and complete a questionnaire.
- b. Targeted engagement events with stakeholders on specific areas of reform. These were augmented by technical meetings.
- c. Public focus groups, with a cross section of people from across the UK.
- d. Meetings with individuals who have experience of the asylum, broader illegal migration, and modern slavery systems.

- 34.** Alongside this consultation programme, officials from the Home Office and the Ministry of Justice delivered, a number of in-house technical engagement sessions to cover the more technical aspects of the proposals, for example, around nationality law and regulations on hauliers.
- 35.** The consultation was delivered in partnership with an insight and strategy firm Britain Thinks, in line with established principles, taking into account any other relevant statutory duties.
- 36.** All of the consultation responses have been carefully analysed by Britain Thinks. That analysis has been shared with the Home Office as it has been prepared and has been the subject of careful consideration. A Government response is being prepared for publication.

## B. Rationale for intervention

37. This Bill, embedded within the New Plan for Immigration, is intended to secure the border and tackle a variety of challenges in the asylum system.
38. There have been increased small boat arrivals this year, with over 3,700 people arriving in the UK by small boats in the first five months of 2021. This is more than double the comparable figure for the same period in 2020.<sup>18</sup> UK asylum claims had risen to 36,000 in 2019, a 21 per cent increase in the year immediately prior to the onset of the pandemic and the highest number since the 2015/16 European 'migration crisis' - while a sizable proportion of the claimants in these cases have crossed safe third countries to reach the UK.
39. At the same time, the Government's ability to remove individuals with no right to remain here has been challenged, for example, by repeated attempts to make new claims or litigation which can delay legitimate removal action. There are around 41,600 failed asylum seekers who have not left the UK. There were 7,000 Enforced Returns in 2019 - a figure which includes failed asylum seekers, foreign national offenders, and other immigration offenders - and this number of returns continued a downward trend seen since 2013. All of these pressures can reduce the resources available to help those most in need.
40. Many of the proposals set out in the New Plan for Immigration require changes to existing legislation. In some cases, secondary legislation will be transposed into primary legislation to place such measures on a stronger statutory footing. Meanwhile, new legislation is proposed for measures which cannot be taken forward through secondary legislation or non-legislative means. All such measures therefore require government intervention.
41. This section provides a summary of the issues being addressed, as set out in the New Plan for Immigration statement, followed by a brief description of non-legislative measures included in the wider programme of reform under the New Plan for Immigration. The impact assessment (IA) is not intended to cover these other non-legislative interventions in detail. Furthermore, as set out, this IA does not appraise impacts in the context of the *fundamental operating system reform* scenario that reflects the scale of the Government's ambition for the programme.

### B1.1 Ending Anomalies in British Nationality Law

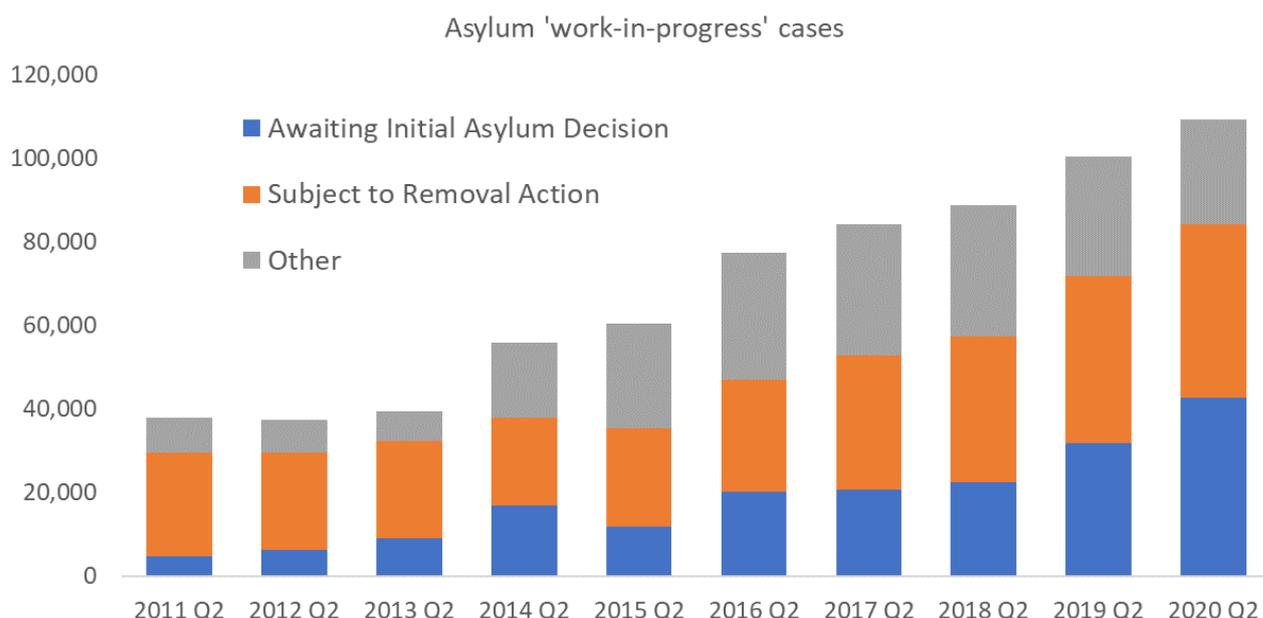
42. Within this Bill, four major anomalies in British Nationality Law are to be ended:
- a. Registration of British citizenship for children of British Overseas Territories Citizens (BOTCs) who did not automatically acquire British citizenship on the basis that their mother was married to someone other than their biological father at the time of their birth.
  - b. The Secretary of State can use their discretion to grant British citizenship to adult applicants where there has been historic legislative unfairness, a failing by a public body, or in the exceptional circumstances of a person's case.
  - c. The Secretary of State can use their discretion in exceptional circumstances to waive a requirement for naturalisation as a British citizen, namely to have been present in the UK at the start of the applicable residential qualifying period.
  - d. Amendments to registration requirements for stateless children, so that only those the Secretary of State is satisfied cannot reasonably acquire another nationality can be registered for British citizenship.

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<sup>18</sup> Internal Home Office Data

## B1.2 Reforming the asylum system

43. In 2019, the latest year prior to the pandemic, the UK received 35,700 new asylum claims, a 21 per cent increase on the preceding year. The numbers of asylum cases currently being processed (work-in-progress) has risen from 37,900 at the end of June 2011 to 109,500 at the end of June 2020. Around three quarters (73%) of these cases have been in the system for more than a year. This includes cases that are being worked towards initial or final decision, as well as cases that have reached a conclusion and where the individuals are to be removed from the UK. This level of unresolved casework means that individuals are left too long in a state of limbo, negatively impacting their well-being and increasing the cost to the taxpayer. As a result, in the financial year 2020/21, the asylum system cost the taxpayer over £1 billion.<sup>19</sup>



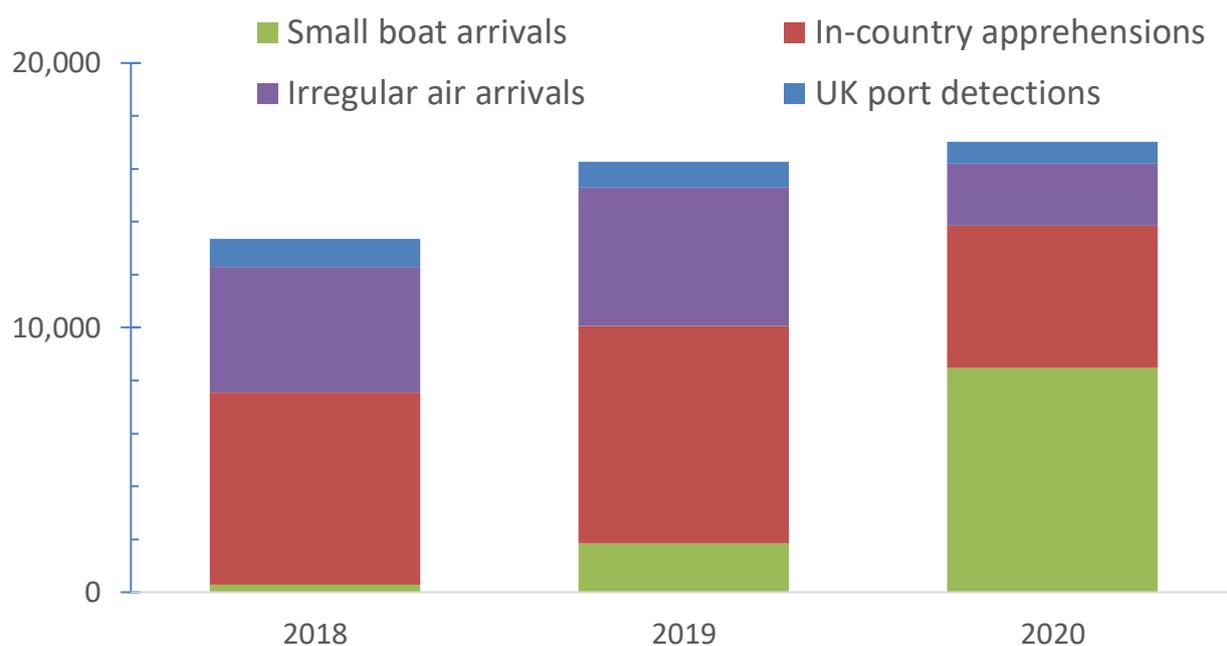
Source: Home Office Migration Transparency Data, June 2020.

44. In the 12 months ending September 2019, analysis of Home Office case files showed that around 62 per cent of asylum applicants to the UK had entered the country irregularly (40% clandestinely, 22% without relevant documentation) with the remainder largely thought to have arrived regularly on a visa before subsequently applying for asylum.<sup>20</sup>
45. The evidence suggests that a majority of asylum seekers have in recent periods been arriving through clandestine methods or without a valid permit. These methods can be unsafe, dangerous and leave people open to exploitation by organised crime groups. One such method of entry is across the English Channel via small boats, which saw a significant increase in 2020 due to the COVID-19 pandemic making other routes less viable.

<sup>19</sup> Home Office Internal Data

<sup>20</sup> Home Office Internal Data

## Detected irregular arrivals to the UK, by mode of entry



Source: Home Office internal management information

46. In 2019, around one in six asylum seekers to the UK were matched to an asylum claim that had been previously made in another European country.<sup>21</sup> At the end of the Transition period, changes to the Immigration Rules were brought into effect which provide legal powers to treat cases as inadmissible if a person has passed through or has a connection to a safe third country where they have previously claimed asylum, or had an opportunity to. Where a person is considered inadmissible, these Rules now enable return to any safe third country that will take them, and mean that their asylum claim will not be considered in the UK. The Nationality and Borders Bill will bring these changes into primary legislation.
47. Since 2015, the UK has received, on average around 3,000 unaccompanied asylum-seeking children per year. In more than 3,800 cases over the five years from 2016 to 2020, where age was disputed and resolved, 54 per cent of those cases were found to be adults. There are safeguarding risks if people over 18 years of age are treated as children and placed in settings, including schools, with children.
48. In order to protect children and vulnerable people, one of the aims of this Bill is to clarify the framework for determining the age of people seeking asylum.

### B1.3 Asylum Claims and Appeals

49. Under the current appeals system it can take years to conclude an asylum appeal. As of May 2020, 32 per cent of asylum appeals lodged in 2019 and 9 per cent of appeals lodged in 2018 did not have a known outcome.
50. If a person's asylum claim is rejected, they have an automatic right to appeal the decision by referring it to the Immigration and Asylum Chamber of the First-tier Tribunal. Seventy per cent of those who are refused asylum at initial decision choose to make this appeal. If the decision is upheld the person claiming asylum has a further route of appeal to the Immigration and Asylum Chamber of the Upper-tier Tribunal where they believe the First Tier made an error in law. If at

<sup>21</sup> Home Office Internal Data

that point they are not satisfied with the result, and they had a substantive appeal before the Upper-tier Tribunal, they may seek permission to appeal to the Court of Appeal and Supreme Court. It is possible for a person, having exhausted their appeal rights, to then bring a new claim, in effect starting the whole appeal process again.

51. The large numbers of repeat unsuccessful claims are placing a burden on the system and delaying hearings for those new to the system that may be found to be genuine or may involve issues of some urgency.
52. A Judicial Review may also be brought against a Home Office decision at various points in the process of seeking asylum or other forms of leave to remain. This option can be used by those wishing to delay their removal. In 2019, there were 8,000 Judicial Reviews against Home Office immigration and asylum decisions. Judges concluded 6,063 cases on paper, that is without a formal hearing, of which 90 per cent were dismissed or refused, with around 17 per cent being deemed by the judge to be “Totally Without Merit”. These figures illustrate that a large percentage of cases taken to Judicial Review are not well-founded, taking up valuable judicial and administrative time and delaying legitimate cases.

#### **B1.4 Supporting Victims of Modern Slavery**

53. The Government remains committed to ensuring the police and the courts have the necessary powers to bring perpetrators of modern slavery to justice, while giving victims the support they need to rebuild their lives. The UK is and will remain a signatory of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT), which sets out our international obligations to identify and support victims of modern slavery.
54. When the Single Competent Authority, (which operates the National Referral Mechanism (NRM)), has deemed there are Reasonable Grounds (RG) to believe an individual is a victim of modern slavery, they are protected from removal for the duration of the recovery and reflection period (45 days in guidance) and until they have received a Conclusive Grounds (CG) decision regarding whether they are a confirmed victim of modern slavery. While individuals are protected from removal they are also entitled to support in line with their needs, subject to certain exemptions.
55. We want to ensure that we are supporting those who need it and that any gaps in the system which allow for the NRM to be misused are being addressed to avoid resources being diverted from victims and benefitting other individuals who do not have a need for protection. The data suggests there are individuals who are making NRM claims from detention enabling them to avoid removal from the country but who are subsequently found not to meet the conclusive grounds threshold for being determined a victim of modern slavery. The number of NRM referrals of people who had been detained within the UK following immigration offences increased from 501 in 2017 to 1,767 in 2019. More recent data suggests volumes are also rising for NRM referrals from FNOs and foreign nationals held on remand, with the number of referrals increasing by over 200 per cent, from around 230 to 730, from 2018 to 2020.<sup>22</sup>The measures outlined in the Bill will seek to help to identify victims of Modern Slavery as quickly as possible.
56. This package of measures is enhanced by non-legislative aspects of the New Plan for Immigration and the broader NRM Transformation Programme.

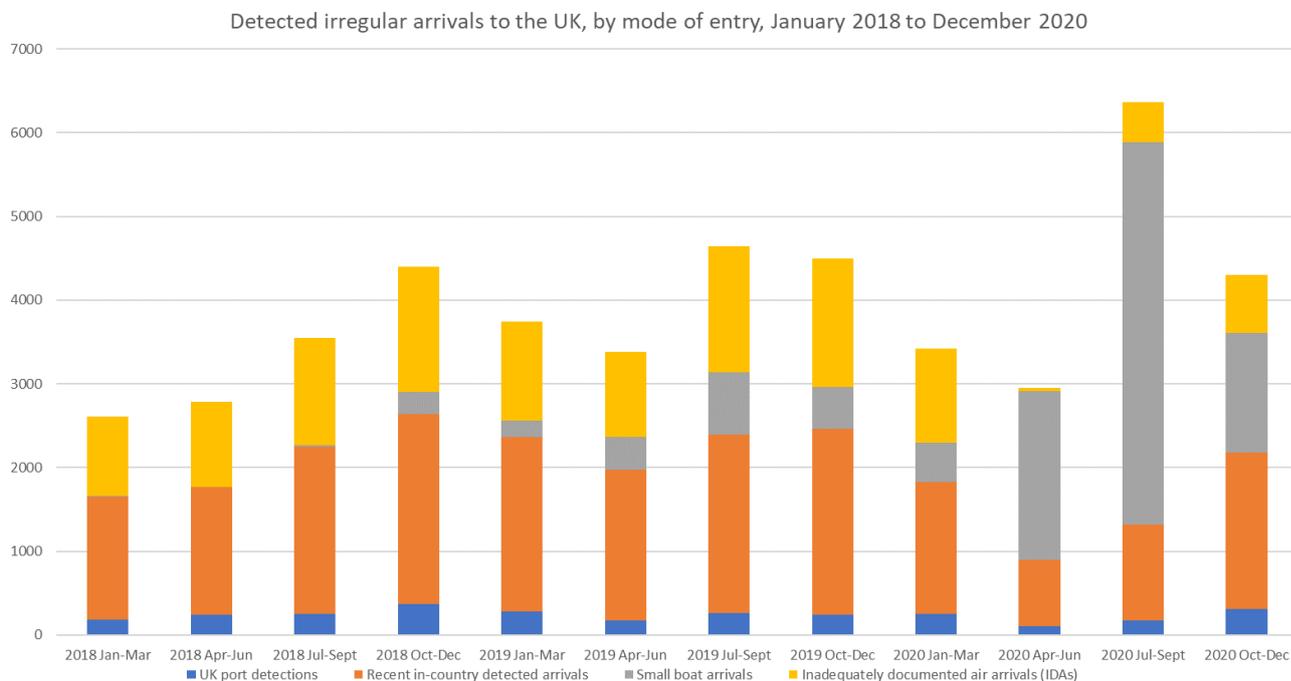
#### **B1.5 Disrupting Criminal Networks Behind People Smuggling**

57. Illegal migration continues to cause significant harm and endangers the lives of those undertaking dangerous journeys, many of which are facilitated by organised criminal groups. In

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<sup>22</sup> Home Office Internal Data

2019, 32,000 illegal attempts to enter the UK were prevented in northern France<sup>23</sup>. There were 16,000 arrivals of individuals by illegal modes of entry detected in the UK in the same year. Although numbers detected attempting illegal entry through ports fell during the COVID-19 pandemic, in the summer of 2020, a record number of 8,500 people crossed the English Channel in small boats<sup>24</sup>. The measures set out in the New Plan for Immigration seek to reduce the viability of these routes and disrupt the criminal networks that support them.



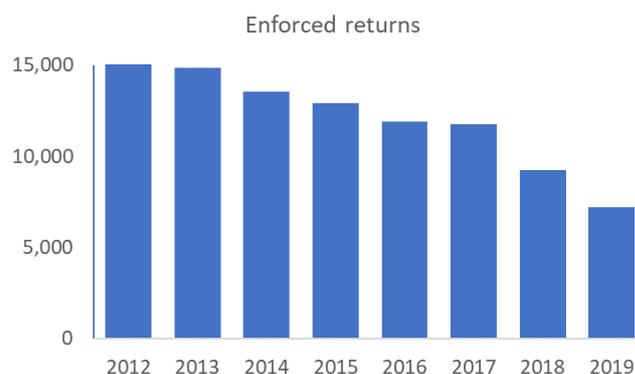
Source: Home Office Internal Management Information

### B1.6 Enforcing returns

- 58.** Enforced returns refer to instances where the Home Office makes arrangements to remove immigration offenders who do not intend to depart voluntarily from the UK. Voluntary return refers to any non-enforced departure of an individual with no right to remain.
- 59.** There has been a gradual long-term reduction in enforced returns from the UK. In 2019, enforced returns fell to 7,193, 22 per cent lower than the previous year, and continuing a downward trend seen since 2013, when there were 14,900 enforced returns.

<sup>23</sup> Counts of attempts may involve the same individual on more than one occasion

<sup>24</sup> Home Office Internal Data



Source: Home Office 'Immigration Statistics, year ending December 2020', returns and detention dataset. 25 February 2021.

- 60.** As of 2020, there are 10,000 Foreign National Offenders living in the community because they cannot be returned to their country of origin. And around 42,000 failed asylum seekers are still living in the UK. While there are various contributing factors to these trends, repeated legal challenges impede our ability to enforce immigration laws, contributing to a downward trend in the number of people, including FNOs, being returned from the UK.
- 61.** In 2019, new claims, legal challenges, or other issues were raised by 73 per cent of people who had been detained within the UK following immigration offences, resulting in release from detention in 94 per cent of cases instead of return from the UK. Following full evaluation, very few of these claims were adjudged to provide sufficient justification to remain in the UK. For all issues raised during detention in 2017, 83 per cent were ultimately unsuccessful.

### B1.6 Non-Legislative Programme

- 62.** This Bill is supplemented by a programme of non-legislative reform within the New Plan for Immigration. This includes strengthening safe and legal routes and enhancing support to victims of modern slavery.

#### Modern Slavery

- 63.** Alongside the measures relating to modern slavery contained within the Bill, a range of non-legislative measures will be introduced to provide enhanced support to victims of modern slavery.
- 64.** This includes plans to strengthen support to First Responders within the immigration system. Further funding will be provided to increase prosecutions and build policing capability to investigate and respond to organised immigration crime. This also includes commitments to ensure that victims' overall support package is more tailored to individual need from the outset, including a new system of financial support, while ensuring that modern slavery victims receive ready access to specific mental health support. New approaches will be piloted to support victims of modern slavery to engage with police and operational partners in the criminal justice system.
- 65.** A modern slavery prevention fund is being proposed to pilot upstream interventions by non-governmental organisations and stakeholders. Additionally, the Government is piloting a new way of identifying child victims of modern slavery, enabling decisions to be taken within existing safeguarding structures by local authorities, police and health workers, who have a duty to work together to safeguard and promote the welfare of all children.
- 66.** The Government will confirm its commitment to bring forward further legislation to support the wider NRM Transformation Programme, and to review the 2014 Modern Slavery Strategy.

## C. Policy objective

67. The New Plan for Immigration programme aims to build a firm but fair asylum and illegal migration system. The specific objectives of the programme include:
- a. (1) increasing the fairness and efficacy of the system so that can those in genuine need of protection are better protected and supported.
  - b. (2) deterring illegal entry into the UK to break the business model of people smuggling networks and protect the lives of those they endanger.
  - c. (3) removing more easily from the UK those with no right to remain here.
68. Programme indicators will monitor delivery of these objectives, which include an increase in the speed of processing through the asylum and protection systems (including appeals) allowing those granted asylum or protection to transfer to the integration stages more quickly, improved effectiveness and efficiency of returns for those whose claims are unsuccessful, and a reduction in attempts to misuse this system from those who are not in genuine need of refuge or protection. This will be further measurable through monitoring that applications for protection are processed both fairly and efficiently, that those who are resettled receive an adequate package of support to enable them to become self-sufficient more quickly, an increase in deterrence occurs for unfounded claims, an avoidance in unintended harmful consequences on vulnerable groups is ensured and displacement to more dangerous migration routes is prevented.
69. The effectiveness of the policy objectives will be kept under review to assess effectiveness. In line with the recommendations made in the 'Windrush Lessons Learned Review'<sup>25</sup>, the Home Office will monitor outcomes and undertake evaluation to assess the effectiveness of the New Plan for Immigration following its implementation (see section K for further details).

## D. Options considered and implementation

70. The Home Office has considered the preferred approach against a counterfactual 'do-nothing' option. A non-regulatory approach has not been considered, as the New Plan for Immigration programme requires Home Office to make changes through legislation, and through changes to UK immigration rules.

### D1. Option 0 – Current Arrangements (the 'do-nothing' option)

The 'do-nothing' option exists as a baseline, or counterfactual, to measure other policy options against. In this option, the UK retains its current approach. No new costs or benefits are incurred, and the system and pressures will remain as described, as this represents the current situation.

### D2. Option 1 – Full Implementation

In this option, all measures under the New Plan for Immigration programme are introduced, intended to enhance fairness and efficacy, deter illegal entries, and return those with no right to remain more easily.

### Preferred option and implementation plan

71. **The Government's preferred option is Option 1:** full implementation of the New Plan for Immigration programme, as outlined in the Bill and as appraised in this IA. Section E sets out the

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<sup>25</sup> <https://www.gov.uk/government/publications/windrush-lessons-learned-review>

approach to appraisal and a summary of the results against the three objectives. Annex B sets out the more detailed appraisal of specific measures in line with the Bill structure (Table 1).

72. This appraisal is based on the Bill measures being implemented within the *existing operating system*. It does not account for the other *fundamental operating system reforms* that are being considered and is therefore conservative, illustrative and should not be interpreted as indicative of the full scale of the Government’s ambition. *Fundamental operating system reforms* aim to produce additional impacts which will increase the overall value of the New Plan for Immigration programme as a whole. The potential volumetric impact of this wider programme is set out, but not appraised, in a scenario included in Annex C.
73. By incorporating all measures included in the programme, the UK can reform its approach, achieving the desired outcomes of enhancing fairness and efficacy, deterring illegal entry, and returning those with no right to remain.
74. The measures contained within the Bill will be introduced following Royal Assent expected in 2022.
75. The measures in Option 1, set out in terms of the Bill structure, are presented in Table 1.

**Table 1: List of Provisions**

#	Measure	Overview
<b>Part 1: Nationality</b>		
1	Address historical anomalies in nationality law (BOTC children)	This measure creates registration routes for children of British Overseas Territories (BOTC) mothers and unmarried fathers, who were unable to acquire nationality under previous unequal legislation.
2	Address historical anomalies in nationality laws (biological fathers)	This measure amends nationality law to enable individuals to register as a British citizen as an entitlement who did not acquire citizenship automatically on the basis that their mother was married to someone other than their biological father at the time of their birth
3	Address historical anomalies in nationality laws (adult registration route)	This measure creates a new registration provision which allows the Secretary of State to use their discretion to grant British citizenship to adult applicants where there has been historic legislative unfairness, a failing by a public body, or in the exceptional circumstances of a person’s case.
4	Address historical anomalies in nationality laws (waiving residence requirement)	This measure gives the Secretary of State discretion in exceptional circumstances to waive a requirement for naturalisation as a British citizen under section 6, and registration under section 4(2), of the British Nationality Act 1981, namely to have been present in the UK at the start of the applicable residential qualifying period. Similar measures are included for British overseas territories citizenship.
5	Remove an area of abuse in nationality law (stateless children)	This measure introduces a new requirement for registration of a stateless child (aged 5 to 17 years) as a British citizen. This is that the Secretary of State must be satisfied that the child cannot reasonably acquire another nationality

#	Measure	Overview
<b>Part 2: Asylum</b>		

6	Core Differentiation	This measure sets out the UK's interpretation of Article 31(1) of the Refugee Convention, introducing a differentiated approach to the treatment of refugees based on whether or not they meet the relevant criteria under that provision.
7	Differentiation in accommodation	This measure provides for various factors the Secretary of State may take into account when deciding on the type of accommodation to allocate to asylum seekers in need of support.
8	Place of claim	This measure stipulates the places where asylum claims must be made, explicitly precluding asylum claims from being made in the territorial seas of the UK.
9	Inadmissibility and Spanish Protocol	These measures ensure that (a) those who arrive in the UK, having passed through safe countries, or who have a connection to a safe country where they could have claimed asylum; and (b) asylum claims from EU nationals can be considered inadmissible to the UK's asylum system.
10	Priority Removal Notice	This measure creates the 'Priority Removal Notice' which is to be served to anyone who is liable for removal or liable for deportation. This notice also requires individuals to provide any information relating to being a victim of slavery or human trafficking
11	Good Faith	This measure introduces a "good faith" requirement for claimants, which, where not adhered to, will be weighed adversely in the balance of the credibility assessment of a claimant's evidence.
12	Legal aid	This measure provides access to legal aid for those served with a Priority Removal Notice and legal aid provision for advice on referral to the National Referral Mechanism.
13	Credibility	This measure creates a principle that little weight should be given to evidence brought late for no good reason. This will also be weighed adversely in the balance of the credibility assessment of a claimant's evidence.
14	Expedited process	This measure creates an expedited appeals process whereby a claimant has a right of appeal to the Immigration and Asylum Chamber of the Upper-tier Tribunal instead of the First-tier Tribunal, where they have made a claim after the PRN cut-off date without good reason.
15	Accelerated Detained Appeals Process	This measure imposes a duty on the Tribunal Procedure Rules Committee to introduce procedural rules for determining Asylum and Immigration appeals (and permission to appeal applications) made by a certain subset of appellants detained under immigration powers within an accelerated timeframe.

#	Measure	Overview
16	Amend section 94 in respect of 'clearly unfounded' claims – removing the right of appeal	This measure removes the right of appeal for protection and Human Rights claims that are certified as 'clearly unfounded' under s94(1) NIAA 2002.
17	Rebuttable presumption for return to safe third country	This measure creates a rebuttable presumption that certain specified countries are compliant with their obligations under the 1950 European Convention of Human Rights (ECHR) to the extent that an individual's Convention rights under Article 3 (no torture or inhuman or degrading treatment or punishment) would be respected upon an individual's return to these specified countries.
18	Interpretation of Refugee Convention	This measure provides definitions of key concepts in the Refugee Convention, used to determine whether an asylum seeker is a refugee within the meaning of the Convention. This includes a provision to determine whether an individual has a "well-founded fear" of persecution in accordance with Article 1(A)(2) of the Refugee Convention
19	Decrease criminality thresholds	This measure reduces the threshold at which a refugee is considered to have committed a particularly serious crime.
<b>Part 3: Immigration Offences and Enforcement</b>		
20	Increase sentence for entering in breach of deportation order	This measure increases the penalty for those returning to the UK in breach of a deportation order from 6 months to 5 years.
21	Amend offence of illegal entry	This measure creates a new criminal offence of arriving in the UK without a valid entry clearance (or ETA) where required, in addition to entering without leave. This will allow prosecutions of individuals who are intercepted in UK territorial seas and brought into the UK who arrive in but don't technically "enter" the UK. The measure increases the maximum penalty, which means it may be triable in the Crown Court, and therefore allows prosecutions to apply to those attempting to commit the offence.
22	Amend offences of facilitation	This measure strengthens the facilitation offences in the 1971 Act by focussing on the behaviour of the facilitator, rather than the individual being brought illegally into the UK, and removing the need to prove that the facilitation seekers is for gain. The measure increases the maximum penalty for the facilitation offences from 14 years to life imprisonment.
23	Clandestine civil penalty overhaul	This measure extends the scope of the civil penalties regime for clandestine entrants so that it also applies to all goods vehicles that have not been adequately secured, whether or not there is a clandestine present in the vehicle.

#	Measure	Overview
24	Power to search containers	This measure provides an immigration officer with additional powers to search containers being used by irregular migrants for concealment in order to enter the UK illegally, where those containers are no longer on board a ship, aircraft, or any vehicle on which they may have been removed from a ship or aircraft.
25	New maritime powers aimed at intercepting and returning migrants at sea	This measure expands current maritime enforcement powers enabling maritime enforcement action to take place outside of UK waters in order to detect and/or prevent the illegal entry of migrants as well as the facilitation of illegal migrants. It includes powers to allow forcible disembarkation of non-compliant passengers.
26	Migrant workers in UK waters	This measure is designed as a placeholder to allow the Secretary of State to oblige foreign workers who require leave to enter the UK to obtain authorisation to work in the UK territorial seas.
27	Additional removal powers - removal timeframes	This measure provides a statutory minimum period to enable individuals to access justice prior to removal and makes provisions for removing individuals, following a failed departure, without the need for a further notice period.
28	Additional removal powers - reform of early removal scheme	This is designed as a placeholder to allow the Secretary of State to amend the Early Removal Scheme (ERS) in three ways. First, it extends the period during which a Foreign National Offender (FNO) can be removed early from their custodial sentence from 9 months to 12 months, so long as they have served half of the requisite custodial period before removal. Secondly, it allows removal from prison to take place at any point in the sentence on, or after, the eligibility date for the scheme. Thirdly, it introduces the 'stop the clock' provision, which will pause the FNO's sentence if successfully returned at the point of removal from prison under ERS. Thereafter, the removed FNO would be liable to serve the outstanding custodial period of their sentence if they returned to the UK at any point in the future.
29	Bail considerations	This measure inserts a new criterion for consideration when determining whether to grant bail to an individual in immigration detention. It would require the decision maker to take into account whether a person has been non-compliant with the immigration or removals processes.
<b>Part 4: Modern Slavery</b>		
30	Modern Slavery (reasonable and conclusive grounds)	This measure clarifies the thresholds applied in determining whether a person should be considered a potential or confirmed victim of modern slavery or human trafficking. It confirms in legislation the thresholds for both the reasonable grounds and conclusive grounds decisions.

#	Measure	Overview
31	Modern Slavery (Recovery and Reflection Exemption)	This measure implements the UK's ECAT obligations to provide a recovery period to potential victims of modern slavery, during which the victim must not be removed from the UK. It also sets out exemptions to the recovery period and introduces a presumption against multiple recovery and reflection (R&R) periods where an individual has already benefitted from an R&R period and the further reported exploitation happened prior to the previous referral into the National Referral Mechanism (NRM) unless in exceptional circumstances.
32	Modern Slavery (Temporary Leave to Remain)	This measure sets out the circumstances in which the Secretary of State must grant temporary, limited leave to remain to confirmed victims of modern slavery.
<b>Part 5: Miscellaneous and General</b>		
33	Age assessment (initial age assessments)	This measure is designed as a placeholder to allow the Secretary of State to bring forward a provision setting out how immigration officials are to conduct initial age assessments.
34	Age assessment (establishing a board)	This measure is designed as a placeholder to allow the Secretary of State to establish a decision-making function in the Home Office for the assessment of age, referred to as the national age assessment board (NAAB).
35	Age assessment (codifying)	This measure is designed as a placeholder for the Secretary of State to make Regulations setting out the principles and guidelines on how to conduct age assessments on individuals where there are doubts as to their claimed age.
36	Age assessment (scientific methods)	This measure is designed as a placeholder for the Secretary of State to make Regulations about the future use of appropriate scientific methods for assessing a person's age, which the Secretary of State only intends to be exercised once she is satisfied that they have been shown to be sufficiently reliable.
37	Age assessment (statutory right of appeal)	This measure is designed as a placeholder to provide for a statutory right of appeal against the age assessment decisions of local authorities or the NAAB.
38	Visa Penalties	This measure is designed as a placeholder for a substantive clause which will allow the Secretary of State to impose visa penalties on any country that does not cooperate on the removal of its nationals who do not have a legal right to be in the UK.

#	Measure	Overview
39	Electronic Travel Authorisations (ETA) - carrier liability and requirement to obtain permission to travel	<p>This measure is designed as a placeholder to allow the Secretary of State to require individuals who do not need a visa, entry clearance or other specified immigration status, to obtain permission to travel in the form of an ETA, in advance of their journey to the UK. It also builds on existing legislation to incentivise carriers to check passengers are in possession of this digital authorisation, where required, or risk a civil penalty.</p> <p>A separate IA has been produced for the introduction of ETAs, given the differences in the evidence base.</p>
40	Wasted Cost Orders	<p>This measure provides a new power for the Immigration and Asylum Chambers of the First tier and Upper-tier Tribunals to order a party to pay a charge in respect of wasted or unnecessary tribunal costs incurred due to a party's unreasonable actions.</p>
41	Consolidation of Immigration Legislation	<p>This measure gives the Secretary of State power by regulation to amend immigration legislation in order to make pre-consolidation changes to facilitate a consolidation bill.</p>
42	SIAC Gap	<p>Some immigration Judicial Reviews can neither be sent to the Special Immigration Appeals Court (SIAC) nor subject to Closed Material Procedure in the High Court. This gap means that the Home Office is unable to defend certain types of immigration decisions based on closed information. This measure amends the SIAC Act to enable the Secretary of State to certify additional decisions relating to immigration.</p>
43	Amendment of s.77	<p>This measure makes it possible to remove someone to a safe third country whilst their asylum claim is pending without having to certify in every case by amending Section 77 of the Nationality, Immigration and Asylum Act 2002.</p>

## E. Appraisal

### General assumptions and data

76. This section sets out the approach to appraisal and a summary of the results against the three objectives:
- a. 'Deterring illegal entry into the UK'.
  - b. 'Removing more easily from the UK those with no right to remain here'.
  - c. 'Increasing the fairness and efficacy of the system'.
77. Annex B sets out the more detailed appraisal of specific measures in line with the Bill structure set out in Table 1.
78. Costs and benefits have been appraised separately in this section.
79. The Nationality and Borders Bill provides the legislative framework to enable fundamental reform to the UK's approach to irregular migration. This reform is envisaged to encompass:
- a. International cooperation and agreements facilitating much higher and more immediate returns.
  - b. The capacity to facilitate such returns.
  - c. Streamlining of the asylum system and associated legal processes.
  - d. A new model for asylum accommodation that, in particular, reflects the substantial cohort of inadmissible returns.
80. This reform is complex, requiring international negotiation, reform of processes and investment in the new approach. It is the Government's ambition to deliver this.
81. This Bill has been introduced in tandem with ongoing work on the policy, negotiation on international agreements and cooperation, as well as planning for changes in the operational approach that taken together are intended to enable wholesale Home Office transformation. As this work is in progress, it is not possible to undertake a meaningful appraisal of the Bill against these wider system reforms. Costs are dependent on agreements, processes and infrastructure that are not yet fully defined.
82. Therefore, the core appraisal, and the rest of this section, looks at the costs and benefits that would be incurred within the current operating environment and the constraints this imposes in terms of impact. This provides an illustration of core impacts of which to assess the Bill. The Home Office have undertaken system modelling of volume impact under these constraints (see annex C). These scenarios are termed '**existing operating system: Low, Medium and High impact**'. The impacts of these scenarios are conservative in comparison to the ambition for wider system reform. To illustrate the Government's broader ambition for the New Plan for Immigration programme the analysis also includes an illustrative scenario showing potential volumetric impacts of '**fundamental operating system reform**' alongside discussion of the assumptions and caveats that apply (see annex C).
83. The following summary uses the best available data and evidence. However, at this stage, complete data are not available for some of the measures that make up the Nationality and Borders Bill, even within the *existing operating system* scenarios. In particular, costs associated with the more significant changes to the asylum accommodation estate are not available, nor are costs associated with a new approach to age assessment, as these are still under active consideration. Similarly, costs avoided from deterrence and returns cannot be monetised with

sufficient analytical certainty at this stage. Given the partial coverage of quantified costs and benefits, the NPSV should be seen as a realistic but only partial assessment of the impacts.

- 84.** In preparing these assessments and underlying modelling and analysis, we took account of the broad evidence base in relation to these issues as well as referring to the published Home Office Statistics and other internal official data and expertise. This broader evidence base includes but is not limited to:
- a. Statistics and reports from UNHRC, Eurostat, Frontex, the European Migration Network, the European Asylum Support Office, the Chief Inspector for Borders and Immigration and the House of Commons Library.
  - b. Research from a range of academic centres and non-governmental organisations, including the Universities of Warwick, Oxford, Coventry and Leeds, along with the Migration Policy Institute, the Refugee Council, Help Refugees (Choose Love), Amnesty International, the European Council on Refugees and Exiles, and the Overseas Development Institute and others.
- 85.** As discussed, to model the potential impacts of the measures contained in the Nationality and Borders Bill, a series of scenarios have been developed based on a high level, whole system stock-and-flow model. For the purposes of economic appraisal, *existing operating system* scenarios have been constructed as 'low impact', 'high impact', and a 'central/best' estimate to illustrate the range of impacts. The scenarios are indicative of what might happen under the proposed policy changes, rather than predictive of the future and, as such, costs and benefits based on them are also illustrations rather than forecasts.
- a. These scenarios illustrate the changes which may result from measures in the Nationality and Borders Bill. The scenarios only look at the impact of these policy changes; further changes as a result of operational changes, or other related policies, are not considered within these scenarios.
  - b. There is a high degree of uncertainty implicit in the trends and management of irregular migration (covering both migration for protection and illegal entry), and these scenario models are a simplification of the complexities and the processes involved. The models themselves focus on the major changes to the system resulting from the Bill, rather than more nuanced changes in individual areas, however, the whole-system nature of the model allows the impact of changes across the system and the combined impact of the changes being made as part of the Nationality and Borders Bill to be considered.
  - c. The scenarios estimate what the impact of the Bill's policy changes would be, assuming that nothing else changed from a pre-COVID baseline in terms of demand and capacity of the system. Baseline figures are largely taken from 2019, due to the effect of the COVID-19 pandemic post-March 2020; figures on irregular entry are drawn from the period October 2019 to September 2020, however, to illustrate increases in 2020 in spite of the pandemic.
  - d. The scenarios do not consider timescales for change or the expected implementation or operationalisation of policy changes. Where possible, measures with a known implementation date have used this date to phase in costs and benefits; otherwise we have made a broad assumption that these will take effect from Royal Assent expected in 2022. As such, the assessment is at a high level and focuses on the overall impacts of change; once implementation dates are known, it will be possible to produce more nuanced analysis.

- e. These 'whole system' scenarios have been adopted to consistently appraise the overall impacts of the Bill measures and avoid missing or double-counting costs and benefits which result from an individual policy change.
- f. While the systems models have been used to provide indicative volumes as a result of policy changes, this was neither possible nor appropriate for all measures in the Bill. As such some measures appraised below have used volume data derived from alternative most relevant sources.
- g. Full details on the assumptions and estimates made on the system models can be found in Annex C.

**86.** Costs and benefits arising as a result of policy measures in the Bill, as appraised within the '*current operating system*' have been monetised using a 'bottom-up' approach; specific costs arising from individual measures have been calculated on the basis of systems scenario volumes (to ensure consistency) and aggregated to give a picture of the overall costs resulting from the policy. These have then been phased-in over the 10-year appraisal period as appropriate, and discounted following HMT *Green Book* methodology.

- a. Where benefits have been monetised using this 'bottom-up' approach, these have been quantified either as cashable savings or as reallocation of resources; the approach has been taken based on the expected outcomes of the particular operational areas being appraised, in coordination with operational leads in those areas.
- b. While costs and benefits have been quantified as far as possible, and included in the overall NPSV of this IA, within the main body of the IA not all costs and benefits have been presented within the narrative, with those with an expected NPSV estimate under +/-£5m excluded for clarity; these can be found in the relevant sections of Annex B.
- c. While all monetised costs and benefits in the main body of the IA have been discounted following HMT *Green Book* methodology, those in Annex B have not been discounted unless otherwise stated.

## Appraisal

**87.** Appraisal of the policy measures within this Bill, within the constraints of the *existing operating system*, is set against a baseline taken from the system modelling, which, for the most part, uses 2019 data as the counterfactual. The choice of 2019 rather than the latest full year for which data are available, 2020, is due to the impact of the COVID-19 pandemic and its effect on migration volumes and systems. The exception to this is the baseline for irregular entry, which are drawn from the period October 2019 to September 2020, in order to illustrate increases in particular types of entry in 2020 despite the pandemic.

**88.** As noted, these system modelling scenarios are intended to provide a cautious and reasonable approach to illustrating potential volumes of individuals through the irregular migration system under the *existing operating system*, rather than robust predictions of anticipated future volumes.

**89.** Analysis and monetisation of the policy measures in the Bill uses the *existing operating system* scenarios to develop the 'Low', 'Medium', and 'High' impact scenarios which have been appraised.

## E0. Summary of the Key Metrics

- 90.** The major monetised costs and benefits associated with the Bill, under the *existing operating system*, are summarised in this section. They are not an assessment of those impacts expected under *fundamental operating system reform*.
- 91.** The most significant monetised costs derived fall on the public sector and include (10-year PV):
- Increased returns costs, low £25.5 million, high £54.7 million, medium £45.0 million<sup>26</sup>.
  - Increased case working costs from Core Differentiation, low £26.4 million, high £33.4 million, medium £29.3 million<sup>27</sup>.
  - Legal Aid Costs, low £11.8 million, high £39.8 million, medium £24.8 million<sup>28</sup>.
- 92.** In addition, a number of smaller monetised costs are identified throughout section E1, which total to a low of £65.1 million, high of £89.0 million, and medium of £76.9 million. Further description of where these costs have been incurred can be found in sections E1.1 to E1.3.
- 93.** The most significant monetised benefits (10-year PV) derived from the included measures are:
- The benefit to the public sector of cost avoidance as fewer individuals are under the Modern Slavery Victim Care Contract as a result of:
    - Fewer individuals eligible for Recovery and Reflection (the R&R exemption)<sup>29</sup>.
    - Increased grants of TLR for those who would otherwise continue in MSVCC support (modern slavery (temporary leave))<sup>30</sup>.
    - Changes in referral numbers as a result of inclusion of modern slavery in Section 120 One Stop Notices.<sup>31</sup>The net impact produces a high benefit estimated as £212.1 million, a medium estimate of £150.4 million and a low of -£10.1 million – this is due to the low impact scenario for One Stop Shop Notices significantly increasing the number of referrals and outweighing the cost avoidance benefit of the other measures.
  - The economic benefit of crime averted as potential victims of Modern Slavery who are also FNOs are not released from detention, low £23.6 million, high £35.4 million, medium £29.5 million.<sup>32</sup>
- 94.** In addition, a number of smaller monetised benefits are identified throughout section E2, which total to a low of £11.3 million, high £25.9 million, medium £18.5 million. Further description of where these benefits have been accrued can be found in sections E2.1 to E2.3.
- 95.** **Between the overall costs and benefits, the Net Present Social Value (NPSV) is estimated in a range of -£162.9 to £115.3 million, with a medium/best estimate of £22.5 million. The NPSV has been estimated by applying a yearly discount rate of 3.5 per cent to all costs and benefits (the figures above having already been discounted per this methodology), then subtracting the total discounted cost from the total discounted benefits.**

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<sup>26</sup> See Annex B2.2, 'Inadmissibility and Spanish Protocol'

<sup>27</sup> See Annex B2.3.1, 'Priority Removal Notice (PRN), associated access to legal aid (LA) and Expedited Judicial Process (EJP)'

<sup>28</sup> See Annex B2.3.1, 'Legal Aid'

<sup>29</sup> See Annex B4.2, 'Recovery and Reflection Exemption'

<sup>30</sup> See Annex B4.3, 'Temporary Leave to Remain'

<sup>31</sup> See Annex B2.3.2, 'Inclusion of Modern Slavery in 'One stop process'

<sup>32</sup> See Annex B4.2, 'Recovery and Reflection Exemption'

96. Of these costs and benefits, a small number will have an impact on UK businesses; these are estimated to generate a Business Net Present Value (BNPV) in a range of -£0.1 to -£0.0 million, with a medium/best estimate of -£0.1 million.
97. From the BNPV, the Equivalent Annualised Net Direct Cost to Business was estimated in a range of -£0.0 to -£0.0 million, with a medium/best estimate of -£0.0 million.
98. All figures in the calculations have been rounded to the nearest £0.1 million, per standard HMT *Green Book* proportionality guidance.

**Table 2: Summary of economic costs and benefits, £ millions (PV), 2021 prices.**

<b>Metric</b>	<b>Low Impact Scenario</b>	<b>High Impact Scenario</b>	<b>Medium Impact/Best Scenario</b>
<b>Present Value Total Cost (£m)</b>	318.1	126.4	<b>175.9</b>
<b>Present Value Total Benefit (£m)</b>	155.2	241.7	<b>198.4</b>
<b>NSPV (£m)</b>	-162.9	115.3	<b>22.5</b>
<b>BNPV (£m)</b>	-0.1	-0.0	<b>-0.1</b>
<b>EANDCB (£m)</b>	-0.0	-0.0	<b>-0.0</b>

*N.B These figures represent a partial monetisation of costs and benefits as not all measures have been fully costed. Furthermore, the impact of fundamental operating system reform have not been appraised and therefore these figures are likely a large understatement in terms of impact under wider reform.*

## E1. Costs

- 99. The overall monetised cost of policy measures included in the Bill is assessed as being in a range between £126.4 to £318.1 million (PV), with a medium/best estimate of £175.9 million (PV) over 10 years.** This does not provide a complete picture of costs. In particular, costs associated with changes to the asylum accommodation estate are not available, nor are costs associated with age assessment, as these are still under active consideration. Furthermore, estimates are based on the Home Office *existing operating system* not the *fundamental operating system reform* that is envisaged.
- 100.** Here a summary of monetised costs is provided, and costs which are expected but which have not been monetised, alongside a summary explanation of the key costs involved. Further detail for each bill measure is provided in Annex B.
- 101.** Costs in this section have been based on applying the scenarios modelled to the existing irregular migration system operated by the Home Office.
- 102.** Sections E1.1 to E1.3, provide an overview of the costs of measures under each strategic objective. These are summarised in Tables 3 to 5 at the end of each section. The tables split the measures into **monetised**, with a medium/central NPSV estimate, and **non-monetised**, which includes an explanation for why it has not been possible to generate a monetised estimate for the measure.
- 103.** Links are included within the tables to the corresponding sections of Annex B, where the full analysis is presented.
- 104.** Across every measure, there may be increased pressure on the Home Office detention accommodation estate, if a greater number of irregular migrants are detained. Although, dependent on volumes, there may be no increase in cost as commercial contracts are determined by the overall detention estate rather than changes at the margins.

### **E1.1 Costs of Strategic Objective 1: ‘Deterring irregular entry into the UK’**

- 105.** Objective 1 includes the measures set out in the following chapters of the New Plan for Immigration statement:
- a. Chapter 4: Disrupting Criminal Networks and Reforming the Asylum System.
  - b. Chapter 5: Streamlining Asylum Claims and Appeals.
  - c. Chapter 6: Supporting Victims of Modern Slavery.
  - d. Chapter 7: Disrupting Criminal Networks Behind People Smuggling.
- 106.** Table 3 sets out the key costs associated with these measures and further detail can be found in Annex B.

**Table 3: Measures in Strategic Objective 1: 'Deterring irregular entry into the UK'**

<b>Monetised</b>		
<b>#/ Section of Annex B</b>	<b>Measure</b>	<b>Medium/Best Estimate of Total Present Value Cost</b>
6 <u>Section B2.1</u>	Core Differentiation	£29.3m Costs will largely arise from the increased frequency of case assessment (from once every 60 months to once every 30 months) of beneficiaries of Temporary Protection
10 <u>Section B2.6</u>	Priority Removal Notice (PRN)	£24.8m Costs will arise from an increase in Legal Aid expenditure as upfront support is provided to help individuals issued with a PRN to understand their options and next steps.
12 <u>Section B2.6.1</u>	Legal Aid	Included in PRN (#10)
14 <u>Section B2.6.1</u>	Expedited process	Included in PRN (#10)
15 <u>Section B2.6.1</u>	Accelerated Detained Appeals Process	Included in PRN (#10)
23 <u>Section B3.4</u>	Clandestine civil penalty overhaul	£18.8m Costs are expected to arise from ongoing public sector implementation costs including recruitment and infrastructure, as well as small private sector familiarisation costs. Public sector costs are uncertain at this stage and will be determined by the operationalisation of enforcement action.
30 <u>Section B4.1</u>	Modern Slavery (reasonable grounds and conclusive grounds)	£0.0m Costs are expected to arise from familiarisation costs for the Single Competent Authority

<b>Monetised</b>		
<b>#/ Section of Annex B</b>	<b>Measure</b>	<b>Medium/Best Estimate of Total Present Value Cost</b>
31 <u>Section B4.2</u>	Modern Slavery (R&R Exemptions)	£7.5m Additional enforced return costs related to additional FNO returns (not included in overarching return costs).
34 <u>Section B5.1</u>	Age assessment (establishing a board)	£20.3m Costs are estimated to arise from salary costs from new employees and overheads including travel, IT, and estates.
<b>Non-Monetised</b>		
<b>#/ Section of Annex B</b>	<b>Measure</b>	<b>Explanation</b>
7	Differentiation in accommodation	We have been unable to provide analysis related to this measure due to the uncertainties around all the factors that could have cost implications.
8	Place of claim	This provision is not expected to generate costs or benefits.
9 <u>Section B2.2</u>	Inadmissibility and Spanish Protocol	Costs expected to arise as a result of this policy measure are included within our systems modelling scenarios, providing overall estimates of costs arising as a result. A fuller consideration of both the size and nature of the costs and benefits will be developed to support operational delivery of this policy.
11	Good Faith	This proposal is at too early a stage of policy development to allow for a quantitative assessment of costs and benefits. A fuller consideration of both the size and nature of costs and benefits will be developed to support operational delivery of this policy.
13	Credibility	As above.

<b>Non-Monetised</b>		
<b>#/ Section of Annex B</b>	<b>Measure</b>	<b>Explanation</b>
16	Amend section 94 in respect of 'clearly unfounded' claims – removing the right of appeal	As above.
17	Rebuttable presumption for return to safe third country	As above.
18 <u>Section B2.5</u>	Interpretation of Refugee Convention	As above.
19 <u>Section B2.6</u>	Decrease criminality thresholds	As above.
20 <u>Section B3.1</u>	Increase sentence for entering in breach of deportation order	As above.
21 <u>Section B3.2</u>	Amend offence of illegal entry	As above.
22 <u>Section B3.3</u>	Amend offences of facilitation	As above.
24 <u>Section B3.5</u>	Power to search containers	No additional costs are expected from this measure because these powers are already enacted by Border Force.
25 <u>Section B3.6</u>	New maritime powers aimed at intercepting and returning migrants at sea	At this stage, required capabilities under each working scenario are still being identified. Therefore, it is not possible to determine the cost of these capabilities.
26	Migrant workers in UK waters	This proposal is at too early a stage of policy development to allow for a quantitative assessment of costs and benefits. A fuller consideration of both the size and nature of costs and benefits will be developed to support operational delivery of this policy.
33 <u>Section B5.2</u>	Age assessment (initial age assessments)	This proposal is at too early a stage of policy development to allow for a quantitative or qualitative assessment of costs and benefits. A fuller consideration of both the size and nature of costs and benefits will be developed to support operational delivery of this policy.
35 <u>Section B5.3</u>	Age assessment (codifying)	As above

<b>Non-Monetised</b>		
<b>#/ Section of Annex B</b>	<b>Measure</b>	<b>Explanation</b>
36 <u>Section B5.4</u>	Age assessment (scientific methods)	As above.
37 <u>Section B5.5</u>	Age assessment (statutory right of appeal)	<p>The right of appeal, while reducing the cost of legal challenge on a per dispute basis, may increase the overall cost of legal challenge of the age assessment decisions made by local authorities. This is a result of the right of appeal seeking to incentivise local authorities to assign the age they believe individuals to be without the financial implications of defending a Judicial Review of the decision.</p> <p>It has not been possible to estimate the cost of this measure at this stage.</p>
38	Visa Penalties	There may be indirect costs as a result of visa penalties measures; this will depend on when and how those measures are applied.
39	Electronic Travel Authorisations (ETA) - carrier liability and requirement to obtain permission to travel	Please refer to the dedicated ETA impact assessment for an appraisal of the costs and benefits of this policy.
40	Wasted Cost Orders	This proposal is at too early a stage of policy development to allow for a quantitative assessment of costs and benefits. A fuller consideration of both the size and nature of costs and benefits will be developed to support operational delivery of this policy.
42 <u>Section B5.7</u>	SIAC Gap	The introduction of a provision to close the 'SIAC Gap' may result in cost savings; GLD have estimated that a SIAC review will cost around 25% less than a case heard in the High Court, but this is subject to a high degree of variation due to the complexity in the type of case heard in SIAC. Future volumes that will be referred to SIAC are also uncertain, and as such we have not been able to monetise the impact of this measure.

<b>Non-Monetised</b>		
<b>#/ Section of Annex B</b>	<b>Measure</b>	<b>Explanation</b>
43 <u>Section B2.2</u>	Amendment of s.77	This proposal is at too early a stage of policy development to allow for a quantitative or qualitative assessment of costs and benefits. A fuller consideration of both the size and nature of costs and benefits will be developed to support operational delivery of this policy.

**E1.2 Costs of Strategic Objective 2: ‘Removing more easily from the UK those with no right to remain here’**

**107.** Objective 2 includes the measures set out in the following chapter of the New Plan for Immigration statement:

- a. Chapter 8: Enforcing Removals including Foreign National Offenders (FNOs).

**108.** Table 4 sets out the key costs associated with these measures and further detail can be found in Annex B.

**Table 4: Measures in Strategic Objective 2: ‘Removing more easily from the UK those with no right to remain here’**

<b>Monetised</b>		
<b>#</b>	<b>Measure</b>	<b>Medium/Best Estimate of Total Present Value Cost</b>
Impact on returns from multiple measures	Measures introduced under the New Plan for Immigration programme will lead to an increased volume of individuals found to have no right to remain.	<p>£45.0m (ranging from £25.5m to £54.7m)</p> <p>The scenario modelling estimates that there may be 1,400 additional enforced returns per year, with a sensitivity range of 500 to 3,000.</p> <p>Coupled with strengthening Home Office’s ability to remove those with no right to remain in the UK, there is likely to be a substantial increase in the total cost of removals whether to countries of origin or to safe third countries. The cost impact of increased returns is estimated to be in the range of £3.5m to £7.5m per year, with a marginal cost of enforced return is estimated at £4,400 per removal (and a sensitivity range of £2,500-£7,000)<sup>33</sup>.</p> <p>This estimate assumes ongoing returns cooperation, as with a country such as Albania (where 10% of the FNO population is Albanian), or improved cooperation, such as is provided for in agreements such as the India Migration and Mobility Partnership agreement.<sup>34</sup></p>
<b>Non- Monetised</b>		
<b>#</b>	<b>Measure</b>	<b>Explanation</b>
27 <u>Section B3.7</u>	Additional removal powers - removal timeframes	<p>It has not been possible to monetise the cost of this measure, however, based on operational expertise we assume there will be minimal additional costs. There is currently a high-level of uncertainty for the impact this measure will have on the length of stay in detention.</p> <p>If this measure works as intended; reducing cancellations and deferrals on enforced returns, then there should be a reduction in the length of stay for detainees in detention. This is not expected to lead to any additional costs.</p> <p>However, if this measure does not impact cancellations and deferrals as intended, then longer notice periods could potentially result in an increase in the length of stay in detention. This is expected to have minimal impact on detention costs as these mostly consist of fixed costs.</p>
28 <u>Section B3.7</u>	Additional removal powers - reform of early removal scheme	As above, though, based on operational expertise, we do not expect costs to the Home Office to increase.

<sup>33</sup> This incorporates additional escorting, ticketing, and any additional integration support. This doesn’t include any additional costs relating to wider processing or detention costs, we assume most of that is fixed. Note, the cost of an enforced return is an average and the actual value can vary between cases and operational changes.

<sup>34</sup> Home Office internal management information

<b>Non-Monetised</b>		
<b>#</b>	<b>Measure</b>	<b>Explanation</b>
29 <u>Section</u> <u>B3.8</u>	Bail considerations	<p>Based on expert judgment from operational colleagues, we assume there will be no additional costs (for example, returns costs) due to this policy amendment. This is because the Immigration Act 2016 already includes a 'catch all' requirement to consider anything that the decision maker considers relevant. The policy amendment is making explicit a factor which may already be considered, where applicable, in making decisions on whether to grant immigration bail.</p> <p>The policy's objective is to reduce the number of detainees from exploiting the bail process. If some decision makers don't currently consider non-compliance in their decision making, the policy amendment could lead to more individuals being refused bail, therefore remaining, or being placed in the detention estate, and ultimately being returned. This would result in an increase in returns costs, though at a level which is too uncertain to provide reasonable quantification.</p>

### **E1.3 Costs of Strategic Objective 3: 'Increasing the fairness and efficacy of the system'**

- 109.** Objective 3 includes the measures set out in the following chapters of the New Plan for Immigration statement:
- a. Chapter 2: Protecting those Fleeing Persecution, Oppression and Tyranny
  - b. Chapter 3: Ending Anomalies and Delivering Fairness in British Nationality Law
- 110.** On introducing provisions to allow mothers and unmarried fathers to pass on nationality, Home Office estimates that 8,000 applications will be made, at an estimated processing cost of £372 per application in 2020/21 prices. On this basis, it is therefore expected that there will be discounted costs of £2.8 million to Home Office, as no fee will be charged for applications.
- 111.** A proposed change to amend historic injustices in the British Nationality Act, involves creating a registration route so that a child can acquire citizenship through their biological father where the child's mother is married to someone else. The Home Office estimates that this will create 100 citizenship applications at an estimated processing cost of £372 in 2020/21 prices. This is expected to bring discounted costs to the Home Office of £0.03 million.
- 112.** One amendment is to limit the registration of a stateless child as a British citizen to cases where the child cannot easily acquire another nationality through their parents. The Home Office is expected to lose £2.0 million (£1,012 per case, undiscounted) in fee income per year from fewer registrations of under 18-year olds.
- 113.** Amending the British Nationality Act 1981 to correct historical anomalies will create a fairer system and establish new routes to nationality to those previously deemed ineligible. Individuals applying for UK nationality will be subject to both a direct financial cost of applying; in addition to a time cost to familiarise themselves with the new routes and the time taken to complete an application.

**Table 5: Measures in Strategic Objective 3: ‘Increasing the fairness and efficacy of the system’**

<b>Monetised</b>		
<b>#</b>	<b>Measure</b>	<b>Medium/Best Estimate of Total Present Value Cost</b>
1 <u>Section B1.1</u>	Address historical anomalies in nationality law (BOTC children)	£2.8m Costs are expected to arise from additional applications and processing costs as a result.
2 <u>Section B1.2</u>	Address historical anomalies in nationality laws (biological fathers)	£0.0m Costs are expected to arise from additional applications and processing costs as a result.
5 <u>Section B1.5</u>	Amend the requirements for registration of stateless children as a British citizen	£14.8m Costs are expected to derive from a reduction in applications and the fees associated
32 <u>Section B4.3</u>	Modern Slavery (Temporary Leave)	£12.7m Costs of Universal Credit expenditure are expected to increase as those granted TLR are eligible, when MSVCC support ends
<b>Non-Monetised</b>		
<b>#</b>	<b>Measure</b>	<b>Explanation</b>
3 <u>Section B1.3</u>	Address historical anomalies in nationality laws (adult registration route)	It has not been possible to form volume or monetised cost or benefit estimates for this route. There is lack of data, particularly surrounding how many individuals would be classed under exceptional circumstances or affected by legislation which could be discriminatory. However, as this measure is an exceptional circumstances route, it is intended to be rarely used. The intended volume effect is expected to be low on this cohort.
4 <u>Section B1.4</u>	Address historical anomalies in nationality laws (waiving residence requirement)	This measure is not expected to increase the overall volume of applications but lead to applications occurring sooner rather than later. This would mean that revenue from fees, and expenditures due to processing, would be received sooner, but that overall levels would remain the same. Therefore, this measure is likely to incur no additional costs or income.
41 <u>Section B5.6</u>	Consolidation of Immigration Legislation	The consolidation of immigration legislation is not expected to have costs.

## **E2. Benefits**

- 114.** The overall monetised benefits of policy measures included in the Bill is assessed as being in a range between £155.2 and £241.7 million (PV), with a medium/best estimate of £198.4 million (PV) over 10 years. This does not provide a complete picture of benefits, as these estimates are based on the Home Office *existing operating system*. Here a summary of monetised benefits and benefits which are expected is provided, but which have not been monetised, alongside a summary explanation of the key benefits involved. Further detail for each Bill measure is provided in Annex B.
- 115.** This includes non-monetised assessment of the benefit of a reduced volume of irregular migrants as a result of the Bill measures and costs associated with reoffending and providing victim support associated with Modern Slavery measures. Additional benefits are described in narrative terms and further detail for each bill measure is provided in Annex B.
- 116.** To model the potential impacts of the New Plan for Immigration, a series of scenario models has been developed, as described in section E0. For the purposes of economic appraisal, the scenarios have been constructed as 'low impact', 'high impact', and a 'medium/best' estimate to illustrate the range of impacts.
- 117.** It has not been possible to monetise all benefits associated with the policy measures within the Bill. Where this is the case, a qualitative approach has been taken to describe the anticipated benefit of the policy.

### **E2.1 Benefits of Strategic Objective 1: 'Deterring irregular entry into the UK'**

#### **Main costs avoided through deterrence and prevention**

- 118.** The New Plan for Immigration aims to reduce the number of individuals in the system. This reduction will be achieved by deterring individuals from attempting to migrate to the UK through irregular means.
- 119.** Prevention of irregular migrants entering the UK is expected to generate benefits through a combination of avoiding possible displacement in the labour market by irregular migrants, the prevention of irregular migrants accessing public services, and avoidance of processing and returns costs associated with irregular migrants with no right to remain in the UK.
- 120.** The success of these measures will ultimately depend on the extent to which various measures are applied, success at preventing irregular entries, and how migrant behaviour is affected. Evidence on migrant behaviour suggests the impact of policy is only one factor in a migrant's journey, with a range of drivers known to cause people to be displaced and seek to migrate; and factors such as language and diaspora influencing journeys to particular countries. Often, little is accurately known about policies in destination countries and many asylum seekers do not know at the start of their journey the country in which they ultimately arrive, while those smuggled for a part or whole of their journey may have no control over their final destination. More may be known about policies by those already in the UK, so there may be some deterrent effect for unfounded claims in country. Currently, although significant numbers of irregular migrants are detected and recorded, the systems modelling assumes that an additional unknown number of irregular migrants enter the UK every year. As there is a cohort of undetected irregular entries into the UK, it is not possible to give a definitive number.
- 121.** A number of measures may deter and prevent irregular migration. While it has not been possible to quantify the individual impact of each of these measures, given that operational

delivery plans for the policy are still under development, or are subject to negotiation of returns agreements, we have used systems modelling to estimate an overall effect as outlined in Annex C.

### **Additional costs avoided through deterrence and prevention**

- 122.** In addition, there may be operational cost savings through less irregular migration. One area with significant cost savings is the Modern Slavery Victim Care Contract (MSVCC), under recovery and reflection exemptions. With an estimated 900 fewer individuals receiving support under MSVCC following a positive decision representing a total saving of £80.2 million (which forms part of total benefits from MSVCC cost avoidance).
- 123.** Deterring individuals with prior convictions will in turn prevent the risk of reoffending and the associated costs (police response and social harm) derived from future crimes. The social and economic cost of a re-offence is on average £5,000 per offence<sup>35</sup>, with an average of 3.97 re-offences in the year post release those FNOs that do re-offend.
- 124.** Further, it is estimated that £29.5 million of economic and social cost associated with crime will be avoided through a public order exemption resulting in potential victims who are also FNOs with previous criminal convictions not being released from immigration detention. However, this only captures the cost of re-offending in one-year post release. Individuals may well keep offending after one year. Therefore, the true economic and social cost of re-offending may be greater.
- 125.** While not possible to fully monetise the entirety of the costs avoided under Core Differentiation due to the highly uncertain impact on migrant behaviour. It is estimated that Changes to Settlement will lead to a total discounted saving of £8.1 million of processing costs, through reduced applications following the introduction of a new English language requirement.
- 126.** A number of the wider benefits arising from the Bill have not been monetised. This is in many cases due to the policy proposals being at too early a stage of policy development to allow for a quantitative assessment of the benefits. A fuller consideration of both the size and nature of costs and benefits will be developed to support operational delivery of this policy.
- 127.** A fee may deter some asylum seekers with Temporary Protection from applying for settlement after 10 years in the UK. However, it would be expected that refugees would not change their behaviour due to the imposition of a fee, given the cost associated with moving from their country of origin and the fact they will have lived and settled in the UK for a significant time period. As such, it is unlikely for individuals to change their behaviour because of the fee.
- 128.** Individuals within the system consume public resource directly, accommodation, or indirectly, health service. By deterring these individuals, these resources can be redirected to migrants in need or the wider public.
- 129.** Enhanced border enforcement which prevents individuals from reaching the UK via dangerous methods will disrupt the business models of the organised crime groups who profit from smuggling people into the UK. However, organised crime groups are adaptable to enforcement efforts and it is likely that displacement and changing methods may arise as a result of new enforcement activity, which may include dangerous methods.

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<sup>35</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/814650/economic-social-costs-reoffending.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814650/economic-social-costs-reoffending.pdf)

## **Wider benefits from system improvements**

- 130.** The suite of proposals under the New Plan for Immigration is intended to produce a range of efficiency gains across Home Office operations, in part through measures included within the Bill. These efficiency gains should include a reduction in the number of cases processed, a reduction in the time and therefore cost of processing cases, fewer aborted removals.
- 131.** The success of the creation of a national age assessment board (NAAB) is dependent on the success of conducting age assessments, in comparison to the current system. The creation of a centralised body to do so is intended to help bring about more consistent practices and processes. Identifying adults claiming to be unaccompanied children can also assist in reducing costs, as unit costs for supporting adults are considerably lower than for minors. There may also be deterrent effects in making it more difficult for adults to claim they are children; however, this may not be possible to quantify.
- 132.** Priority Removal Notices (PRN) will allow claims to be brought forward before detention, reducing the unnecessary use of the detention estate. PRN in conjunction with enhanced Legal Aid entitlement aim to expedite the judicial process and reduce the likelihood of repeat appeals. Directing cases to the Immigration and Asylum Chamber of the Upper-tier Tribunal where a Judicial Review has quashed a certification decision will remove the need for repeated Home Office decisions and will reduce the incentive for claimants to bring late claims. This will result in a financial benefit with savings to the justice system and avoiding unnecessary processing costs for Home Office.
- 133.** Improved efficiency in how the justice system deals with immigration cases is likely to have spill over benefits to the whole justice system, both efficiency gains and the public's perception of the system.
- 134.** The expansion of the use of ETAs will give the Home Office and its agencies greater visibility of, and capability to screen, foreign nationals who pose a risk to the UK on entering thanks to greater visibility of the non-visa nationals entering the country and identify where individuals have overstayed their right to remain in the UK. Analysis of ETAs impact has been carried out in a separate, standalone IA.
- 135.** System modelling assumes that there will be efficiency gains to the immigration system as a result of reforming the overall system. One example of this is that, if third country removals agreements are set up, removals can be made using fewer beds in the detention estate.

## **E2.2 Benefits of Strategic Objective 2: 'Removing more easily from the UK those with no right to remain here'**

### **Main costs avoided through returns**

- 136.** The UK Government's ability to remove individuals would increase as a result of greater cooperation and the negotiating additional returns agreements, either with the country of origin or third-country agreements.
- 137.** At present, Home Office estimates that approximately 11,200 people per year enter the third country returns, or 'inadmissible' system and of these, around 300 per year are returned to a third country. We have assessed how these volumes (and returns from detention) might change under various scenarios under the New Plan for Immigration in Annex C.
- 138.** Removal of individuals without the right to be in the UK will prevent their consumption of immigration related services and wider public services, such as health services.

### **Additional costs avoided through returns**

**139.** Expenditure on modern slavery victim support under the *existing operating system*, including accommodation, is one area that should be reduced following these proposals. The amount of financial support typically ranges from £35 to £65 per week. While dispersed accommodation is estimated to be £28 per night. Both cost categories will scale with the number of individuals removed from the system.

### **Wider benefits from returns**

**140.** Deterring FNOs from returning to the UK in breach of a deportation order will avert the opportunity to re-offend within the UK. Preventing re-offending will save the cost associated with criminal behaviour including costs to the prison service, where the estimated annual cost of imprisonment is over £28,000.

### **E2.3 Benefits of Strategic Objective 3: ‘Increasing the fairness and efficacy of the system’**

**141.** The main monetised benefit within this objective is the cost saving to the Home Office as confirmed victims of modern slavery who are granted Temporary Leave to Remain are assumed to no longer receive support through the MSVCC. It is estimated that 1,200 individuals will leave support as a result of the policy. With a monthly saving of £1,300 per person leaving the MSVCC, it is estimated that £70.2m of MSVCC cost will be avoided as a result (which forms part of total benefits from MSVCC cost avoidance).

**142.** The inclusion of Modern Slavery in the ‘one-stop process’ may increase NRM referrals and identify more victims of modern slavery. This could have significant welfare benefits in terms of reduced physical and emotional harm for the individuals concerned. Conversely, a scenario developed for the Modern Slavery Public Order Grounds measures could see a reduction in the number of potential victims receiving support.

**143.** Correcting historical anomalies within the British National Act 1981 will ensure that fairness within the system is established. Individuals with a genuine claim, previously wrongly denied, will now be able to rightly apply and be granted to British nationality.

**144.** Current immigration legislation is to be consolidated by the Law Commission. In accomplishing this the whole system increase in efficiency and transparency, saving time and money for applicants and the taxpayer.

### **E3. Uncertainties and Assumptions**

- 145.** It is important to note that all of the appraisal undertaken makes use of the Home Office's *existing operating system*; this is predicated on the assumption that policy measures within the Bill are implemented in isolation, rather than as part of a broader package of operational transformation. This approach has been taken to appraise the effects of legislative changes introduced by the Bill itself, without entangling these with wider reform efforts within the programme.
- 146.** Further to the above, the operational change expected to result from *fundamental operating system reform* has been considered (and demonstrated more fully in Annex C); as this reform is under ongoing development however it has only been possible to demonstrate as an illustrative scenario. It is possible that measures in the Bill will have greater effects than those quantified in our *existing operating system* 'low', 'medium', and 'high' scenario appraisals when combined with these system reforms, where synergies exist from combining legislative, operational and international agreement changes.
- 147.** It has not been possible to monetise costs and benefits for all policy measures and we make a number of assumptions and scenario assessments of demand even where impacts are quantified. In particular we have not monetised the cost avoided from deterrence and returns as this would require a broader understanding of the size of the irregular population and their likelihood of imposing costs on the enforcement and removals process.
- 148.** Measuring change as a result of the New Plan for Immigration programme's 'Deterring irregular entry into the UK' and 'Removing more easily from the UK those with no right to remain here' objectives may be a challenge given the uncertainty surrounding global migration flows following the 2020-21 COVID-19 pandemic. Policy decisions based on pre-pandemic data are subject to considerable sensitivity and variation as a result, which will affect likely volumes, costs, and benefits.
- 149.** Given the range of possible behavioural responses, and the possibility of migration patterns changing following the COVID-19 global pandemic, it is not possible to develop a complete picture of the baseline. As such the scenarios used are estimates based on pre-pandemic data rather than a definitive representation of possible changes to migration flows.
- 150.** Under the 'Deterring irregular entry into the UK' objective, migrant behaviour in making the decision to migrate, include seeking asylum, is complex and contain a variety of "pull" and "push" factors, as a result any intervention will have uncertainties, including but not limited to whether the imposition of a fee would deter settlement applications from refugees.
- 151.** Under the 'Removing more easily from the UK those with no right to remain here' objective, work is ongoing to develop bilateral and/or multilateral agreements for the return of foreign nationals considered inadmissible to the UK; while estimates of these removals agreements have been included in the scenario modelling, these will depend on agreements being reached to produce more robust estimates.
- 152.** In some areas of the 'Increasing fairness and efficacy of the system' objective, volume estimates are taken from census data which is imperfect at identifying specific characteristics. The analysis also fails to factor in deaths between the time of the census (2010) and now. Therefore, volume and cost estimates are likely to be an over-estimate.
- 153.** Resource impacts on Home Office and its agencies and therefore on the public purse are not possible to monetise fully at this time. Further work to understand implementation is ongoing and will be developed using the system modelling to provide volumes of flows through the system.

#### **E4. Risks and Unintended Consequences**

**154.** The stakeholder and public consultation on the New Plan for Immigration identified additional risks and unintended consequences that may arise as a result of the Bill.

**155.** Key concerns raised included that:

**156.** Proposals intended to disrupt criminal networks may have a disproportionate impact on specific groups with protected characteristics:

- a. Language requirements may restrict access to proposed settlement schemes and have different effects depending on refugee protected characteristics.
- b. This provision needs to be considered in conjunction with the provision on changing the length of leave from five years to 30 months, as there is likely to be an impact on Indefinite Leave to Remain (ILR) volumes in the baseline through more regular reviews for those granted temporary protection.
- c. Proposals on enforced returns, including of foreign national offenders (FNOs) may not be effective either in promoting compliance or ensuring the swift return of non-eligible applicants, including FNOs.
- d. There may be an equalities impact of this provision in relation to those granted temporary protection.

**157.** Where relevant to the Nationality and Borders Bill changes, these concerns have been considered as part of the systems modelling scenarios informing the volume of irregular migrants moving through the system. The differing scenarios have made a range of estimates on the effectiveness of the policy under the *existing operating system* and under *fundamental system reform* with the former used to calculate the partial NPSV for the Bill measures and the latter to outline the scale of ambition for the wider reforms. Under these scenarios:

- a. In the *existing operating system*, the number of individuals entering the UK by existing irregular routes is estimated to fall by between 7 and 17 per cent under the range of modelled scenarios, with a central estimate of 12 per cent; however, displacement is assumed to occur. Under *fundamental system reform* the number of people entering irregularly could reduce further, perhaps by as much as 70 per cent. Again, displacement is likely, though some deterrent effect may be possible with a swift, effective and visible third country return process.
- b. In the *existing operating system*, the number of people claiming asylum is estimated to fall by between 6 and 15 per cent, with a central estimate of 10 per cent, through a combination of fewer successful illegal entries, fewer asylum claims in detention, and fewer applications being made by people already in the UK at the Asylum Intake Unit. As an alternative scenario, under *fundamental system reform* claims might fall by a larger amount, the analysis assessed 29 per cent as an illustrative figure as illegal entries are further reduced.
- c. The proportion of inadmissible claimants returned is set at between zero and 50 per cent, though the capacity within *the existing operating system* means that numbers could be up to around 2,000 per year. In contrast, under *fundamental system reform* the proportion of people returned could reach as much as 70 per cent, with high levels of co-operation and agreement on returns, and operational capacities increased if the system is refocused and able to deliver larger numbers of third country returns.

**158.** The cost impacts of these concerns have also been reflected in the assessment of Bill measures at the more granular level:

- a. The cost of more regular reviews for those granted temporary protection is considered in the assessment of impact for Core Differentiation.

**159.** Equalities impacts have been appraised separately in the New Plan for Immigration equalities impact assessment (EIA).

#### **Impact on Small and Micro-Businesses (SMB)**

**160.** The New Plan for Immigration programme is not expected to have a significant impact on small and micro-businesses. While there are likely impacts on SMBs within the policy measures being undertaken, no exemptions or mitigations for SMBs are considered necessary.

**161.** Clandestine Civil Penalty reform measures may disproportionately impact SMBs which represent 85 per cent of UK hauliers, however, additional costs are expected to be small. Further work to confirm this position is ongoing.

## **F. Proportionality.**

- 162.** At this stage the IA makes use of a wide range of data to indicate the areas in which costs and benefits are anticipated to occur, including through scenario modelling, however these assessments may change as the external environment changes and we observe how migrants and other actors respond to changes. The assessments will be further developed alongside plans for the operational delivery and monitoring and evaluation of the proposals; including any wider *fundamental operating system* reform.
- 163.** At this stage, the appraisal should be considered to indicate where known costs and benefits are likely to fall and provide order-of-magnitude indicative assessment of the scale of these where possible. As a number of policy proposals have not been monetised at this stage, including areas such as costs avoided from deterrence and removal; accommodation and age assessment; and implementation and running costs for Home Office, MoJ and its agencies, this IA does not provide a complete analytical picture; nor does it reflect the full scale of the Government's ambition in the wider New Plan for Immigration. As operational delivery and implementation of the broader New Plan for Immigration continues, further analysis will develop monetised costs and benefits for the programme.

## **G. Risks.**

- 164.** At this stage, analysis in the New Plan for Immigration programme is based on a number of assumptions. These include the volumes of irregular migrants entering the system, the percentage of persons moving through the system via the various routes, and the effectiveness of elements of the overall system in achieving its desired outcomes. Assumptions are made in the absence of robust data and where data relating to measures is limited.
- 165.** A significant degree of uncertainty is present in the data, particularly relating to the impact of the COVID-19 pandemic on irregular migration and the highly unpredictable nature of irregular migration, as well as wider global migration trends. The chosen scenario for system modelling represents a best estimate using available data, and as such any deviation from this scenario could have significant impacts on the volume of persons moving through the system, and therefore the costs and benefits associated with these changes. Low and high estimates are also provided to illustrate a range of uncertainty.
- 166.** Results and estimates across the New Plan for Immigration programme should be seen as provisional, and not given, especially as costs and benefits will depend on the way that Bill and wider measures are implemented and the behavioural responses of migrants and other actors to the changes.
- 167.** In the scenario systems models, a cautious and reasonable approach has been taken to developing the scenarios used. These scenarios are intended to demonstrate possible effects of the policy changes introduced by the Bill, so do not represent definitive predictions of what the effects will be.
- a. Most notably, the scenarios make a series of assumptions about the impacts of the Bill on each part of the system (see Annex C). However, the size of these impacts is difficult to estimate with any certainty. Objective evidence has been used where available to inform these assumptions, but many are based on the judgement of officials where such evidence is not available. The resulting scenario outputs span a wide range in some areas to reflect the uncertainty resulting from this.
  - b. The scenarios largely use 2019 data as a baseline for the irregular migration system. This simplifies matters by excluding the effects of COVID-19, as 2020 data would not provide a stable basis for modelling. However, this means that any long-term impacts of the pandemic (for example, on migration patterns) may not be reflected.
  - c. These scenarios are also a simplification of the irregular migration system; for reasons of proportionality the scenarios modelled reflect the major changes resulting from the Bill, rather than nuanced changes to every aspect of the irregular migration process.

## H. Direct costs and benefits to business calculations

168. The provisions of the Nationality and Borders Bill are expected to result in direct costs or benefits to UK businesses are outlined in Table 7.
169. As Section E outlined an appraisal of the main changes to the immigration system, a discussion of direct and indirect business impacts relating to policy changes is included within this section.

### Direct impacts to business

**Table 7: Overview of direct impacts to business.**

Impact Category	Type of business affected	Cost or Benefit	Magnitude of impact
Clandestine civil penalty overhaul	Hauliers and Heavy Goods Vehicle (HGV) drivers	Cost	<p>Hauliers and drivers are already required to secure their vehicles in accordance with the existing Civil Penalties Regime. As a working assumption, secure vehicles requirements have been assumed to be the same as the current system.</p> <p>However, businesses may incur one-off costs to ensure their vehicles comply with any revisions to regulations or codes of practice. Training may also be a one-off cost depending on whether HGV drivers need regular training.</p> <p>Businesses will need to be familiar with the new requirements to ensure compliance and continue their businesses activities, therefore familiarisation costs are expected.</p> <p>Manual vehicle checks may increase business operating costs, due to the potential for some working time being required for compliance.</p> <p>Fines issued under the Civil Penalties Scheme are not considered a cost to business for the purpose of this assessment, as these costs can be avoided by ensuring compliance with the scheme.</p>

Impact Category	Type of business affected	Cost or Benefit	Magnitude of impact
Electronic Travel Authorisations (ETA)	Passenger carriers (that is, Airlines)	Cost	<p><b>ETAs have been appraised separately in a dedicated Impact Assessment.</b></p> <p>Assessment suggests that there will be a familiarisation cost for carriers operating services into the UK who will need to understand the new policy framework, operational processes, and the impact this will have on their responsibilities. There is an opportunity cost associated with this familiarisation as employees will be diverted from their normal roles.</p> <p>The overall Equivalent Annual Net Direct Cost to Business (EANDCB), expanded upon in the dedicated IA for ETAs, is expected to be between £1 and £5m, with a central estimate of £2m.</p> <p>The introduction of an ETA scheme will necessitate some changes to the processes by which the government interacts with carriers (and vice-versa), although the extent of these changes will be dependent on the sector, and the final design of the system. These costs are still uncertain as the technical requirements of any IT systems are still to be confirmed.</p>
Knowledge of Language and Life in the UK (KoLL) requirements	Test centres	Benefit	<p>There is expected to be a benefit to business from the imposition of the knowledge of language and life in the UK (KoLL) requirements for those granted temporary protection. Imposing requirements to pass the Life in the UK test is expected to result in additional demand from test takers. The benefit to test providers will be additional revenue in terms of fees received, which is currently at £50 per individual, minus the cost of its provision. This will ultimately depend on volumes of settlement applications for those in the lower category of leave, the pass rate given there is no restriction on the number of attempts possible, as well as the current cost of test provision, which are all highly uncertain factors.</p> <p>In addition, this benefit will arise only 10 years after the policy implementation, given those granted temporary protection will require 10 years of residency in the UK prior to applying for ILR.</p>

### **Indirect impacts to business**

**170.** No indirect impacts on business have been identified as a result of the Nationality and Borders Bill measures. Any indirect impacts are related to the labour market effects of irregular migrants in the informal economy, and are as such out of scope of this IA.

## **I. Wider impacts**

**171.** While the New Plan for Immigration programme is intended to reform the UK's approach to irregular migration, it is expected that there may be wider impacts as a result. These can include, but are not limited to:

- a. A possible reduction in people trafficking by criminal organisations.
- b. A possible reduction in the size of the illegal employment labour pool, and reduced crime related to people-trafficking.
- c. A possible reduction in migrant deaths while attempting to enter the UK irregularly, depending on displacement effects.
- d. Improved integration outcomes through new safe and legal migration routes.
- e. Improved efficiency of the asylum system leading to earlier positive outcomes for those requiring protection and earlier integration into UK society, with the associated consequent benefits.

## **J. Trade Impact.**

- 172.** The New Plan for Immigration programme is not expected to have direct impacts on the UK's overseas trade and investment. There may be indirect effects as a result of visa penalties measures; this will depend on when and how those measures are applied.
- 173.** Minor impacts on trade, specifically on imports, may occur where additional border checks at ports cause delays in the movement of goods vehicles. Operational design of these checks is intended to minimise this disruption.
- 174.** Home Office does not expect there to be any impacts which require notification to the WTO, nor are there expected to be measures likely to treat UK and overseas businesses differently.

## **K. Monitoring and evaluation (PIR if necessary), enforcement principles.**

- 175.** The Home Office is establishing a monitoring and evaluation plan for the New Plan for Immigration.
- 176.** Programme monitoring will involve collecting and analysing data across a range of indicators to monitor whether the measures introduced are achieving their intended outcomes. Home Office has developed a set of draft outline indicators which are being used as the basis for this and will be iterated as the programme develops to adapt to support programme implementation. Monitoring indicators will be aligned with metrics developed for Home Office's Outcome Delivery Plan 4 ("Tackle illegal migration, remove those with no right to be here, and protect the vulnerable"). Exact details of the data to be used are under development. However, Home Office expects that regular analysis of statistics, management information, and key metrics gathered through the relevant operational bodies will support monitoring.
- 177.** In addition, Home Office is developing plans for process and impact evaluation to supplement the monitoring data and provide further assessment of the effectiveness of the New Plan for Immigration programme in delivering its intended outcomes, operational implementation, and potential unintended consequences.
- 178.** Evaluation will be conducted in line with HM Treasury *Magenta Book* guidance and will be integrated into programme delivery. Home Office anticipates monitoring and evaluation data will be used to develop a proportionate Post-Implementation Review plan.

## **L. Annexes.**

- 179.** Three annexes are attached to this impact assessment:
- 180.** Annex A is a summary of the overarching Equality Impact Assessment ('EIA'), produced to support decision makers to comply with the Public Sector Equality Duty ('PSED'), which arises at Section 149 of the Equality Act 2010.
- 181.** Annex B is a detailed narrative summary of the pillar-by-pillar *existing operating system* analysis of the provisions in the Bill, supporting the narrative in Section E, above.
- 182.** Annex C is a summary of the system modelling used to develop the scenarios used to model changes to the number of individuals interacting with the UK's irregular migration processes.

## Annex A: Summary of the Equalities Impact Assessment

Mandatory specific impact test - Statutory Equalities Duties	Complete
<p>An overarching Equality Impact Assessment (EIA) has been produced to support decision makers to discharge their Public Sector Equality Duty (PSED), which arises at Section 149 of the Equality Act 2010 (the 2010 Act). This EIA is a living document, which reflects the careful consideration of a wide range of data and evidence, including responses to the public consultation on the New Plan for Immigration, which ran between 24 March and 6 May 2021.</p> <p>A key emerging finding from the Bill EIA is that there is a risk that our policies could indirectly disadvantage protected groups. However, the analysis is that with appropriate mitigation and justification, such impacts would not amount to unlawful indirect discrimination within the meaning of the 2010 Act.</p> <p>Of particular note are the following groups:</p> <p>Illegal entrants and arrivals from safe third countries. Evidence indicates that 74 per cent of those arriving in the UK by small boat in 2020 were aged between 18-39 years and 87 per cent of all arrivals were male.<sup>36</sup> The top five nationalities arriving by small boat – both male and female – are people from Iran, Iraq, Sudan, Syria and Afghanistan.<sup>37</sup> Evidence suggests the measures to strengthen border controls and the differentiated approach to asylum claims are more likely to disadvantage this group, although the measures do not seek to actively target any specific group of persons protected under equalities legislation. There is a risk that increased security and deterrence could encourage these cohorts to attempt riskier means of entering the UK. However, deploying these measures does advance the legitimate aim of encouraging asylum seekers to claim in the first safe country they reach and not undertaking dangerous journeys facilitated by smugglers to get to the UK, though evidence supporting the actual effectiveness of this approach is limited. The analysis is that such disadvantages would be justified and proportionate, in order to support the overarching policy objectives of the Plan, in particular to deter illegal entry into the UK. There would therefore not be any unlawful discrimination.</p> <p>Vulnerable people. The PSED is concerned with the protected characteristics set out in the 2010 Act, rather than with ‘vulnerable’ groups in general, but there are clearly personal circumstances arising from protected characteristics that could lead to a person being vulnerable. For example, a person who has a disability could be vulnerable because of their physical or mental health. Similarly, women and girls may be vulnerable in contexts where there is a risk of sexual violence.</p> <p>Also, of note in this context is Section 55 of the Borders, Citizenship, and Immigration Act 2009, which creates a duty regarding the welfare of children, in the discharge of immigration, asylum or nationality functions by the Secretary of State for the Home Department. The Secretary of State for the Home Department must make arrangements for ensuring that in discharging these functions, regard is had to the need to safeguard and promote the welfare of children who are in the UK, and that any services provided by another person pursuant to arrangements which are made by the Secretary of State for the Home Department and relate to the discharge of these functions are provided having regard to that need. Children are defined as people aged under 18 years.</p>	<p>Yes</p>

<sup>36</sup> New Plan for Immigration, Chapter 1.

<sup>37</sup> Home Office Internal Management Information.

<b>Mandatory specific impact test - Statutory Equalities Duties</b>	<b>Complete</b>
<p>This duty is separate from the PSED, but child safeguarding considerations may arise in consideration of possible equalities impacts on children, in the context of an analysis of the protected characteristic of age. It is important to note that – much as with PSED – the duty here is one of ‘having regard’ to the need to safeguard and promote the welfare of children who are in the United Kingdom. Other factors may also be relevant in the formulation and implementation of policy.</p> <p>These are then distinct considerations, but there is nevertheless a degree of overlap when looking at the needs of an individual in a holistic fashion.</p> <p>Vulnerable people could be children, disabled people and people who are vulnerable for reasons linked to other protected characteristics – including but not limited to gender reassignment, pregnancy and maternity, sexual orientation, and sex. Members of this cohort might find it more difficult than others: to disclose what has happened to them; to participate in proceedings; and to understand the consequences of non-compliance with legal requirements.</p> <p>The Home Office will continue to consider ways in which to mitigate adverse impacts on vulnerable people. For example, it will mitigate the risk of adverse impacts on unaccompanied asylum-seeking children by exempting them from the inadmissibility process. the Home Office will provide guidance to operational teams on interviewing and supporting vulnerable people, and will also provide increased access to legal aid.</p> <p>Beyond these and other measures, it will be important to monitor and evaluate implementation. With adequate mitigation, we anticipate that many potentially adverse impacts will be removed, and that any remaining would be justified and proportionate as they support the overarching legitimate policy objectives of the Plan, in particular, to increase the fairness and efficiency of our system so that we can better protect and support those in need of asylum through safe and legal routes and to deter illegal entry into the UK. This would ensure that there is no unlawful indirect discrimination.</p> <p>The SRO has agreed these summary findings.</p>	<p><b>Yes</b></p>

## Annex B: Analysis by Bill Part

1. This annex includes the detailed economic analysis of each provision within the Nationality and Borders Bill against the *existing operating system*.
2. The Nationality and Borders Bill provides the legislative framework that can enable fundamental reform to the UK's approach to irregular migration. This reform is envisaged to encompass:
  - a. international agreements facilitating much higher and more immediate returns;
  - b. the capacity to facilitate such returns;
  - c. streamlining of the asylum system and associated legal processes; and
  - d. a new model for asylum accommodation.
3. This reform is complex, requiring both international negotiation, reform of processes and investment in the new approach. It is the Government's ambition to deliver this.
4. This Bill has been introduced in tandem with ongoing work on the policy and operational transformation that will enable wholesale transformation. As this work is in progress, it is not possible to undertake a meaningful appraisal of the Bill against these wider system reforms. Costs are dependent on agreements, processes and infrastructure that are not yet fully defined.
5. Therefore, the core appraisal looks at the costs and benefits that would be incurred while operating mostly within the current operating environment and the constraints this imposes in turns of impact. This provides an illustration of core impacts of which to assess the Bill. We have undertaken system modelling of volume impact under these constraints (see annex C). We have termed these scenarios 'existing operating system: Low, Medium and High impact'. The impact of these scenarios are conservative in comparison to the ambition for wider system reform.
6. To illustrate the Government's ambition for this Bill we have also developed an illustrative scenario showing the potential volumetric impacts of 'fundamental operating system reform' (see annex C). As explained, the ongoing nature of the work to develop this model means that it has not be possible to monetise the cost of these changes and therefore the core of this appraisal is based on the conservative assumptions set out within the constraints of the 'existing operating system'.
7. Analysis in this annex is organised according to the five parts of the Bill; 1: Nationality, 2: Asylum, 3: Immigration Offences and Enforcement, 4: Modern Slavery and 5: Miscellaneous and General.
8. The analysis follows a standard format; first the **Background** to each provision is introduced, providing historical and contextual information related to the provision. Next, the **Objective** of the provision; the issue it aims to resolve or the goal it aims to achieve. Then the **Current System** is introduced; explaining the existing structure or procedure in which things are done. The expected **Costs** and **Benefits** are then presented. Any **Potential Unintended Consequences** are explained afterwards, and then finally, the **Uncertainties, Risks, and Assumptions** involved in the analysis.

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## B1: Nationality

9. Sections B1.1- B1.5 provide analysis of the following measures within the Nationality and Borders Bill:

Section	Measure	Overview
B1.1	Address historical anomalies in nationality law (BOTC children)	This measure creates registration routes for children of British Overseas Territories (BOTC) mothers and unmarried fathers, who were unable to acquire nationality under previous unequal legislation.
B1.2	Address historical anomalies in nationality laws (biological fathers)	This measure amends nationality law to enable individuals to register as a British citizen as an entitlement who did not acquire citizenship automatically on the basis that their mother was married to someone other than their biological father at the time of their birth.
B1.3	Address historical anomalies in nationality laws (adult registration route)	This measure creates a new registration provision which allows the Secretary of State to use their discretion to grant British citizenship to adult applicants where there has been historic legislative unfairness, a failing by a public body, or in the exceptional circumstances of a person's case.
B1.4	Address historical anomalies in nationality laws (waiving residence requirement)	This measure gives the Secretary of State discretion in exceptional circumstances to waive a requirement for naturalisation as a British citizen under section 6, and registration under section 4(2), of the British Nationality Act 1981, namely, to have been present in the UK at the start of the applicable residential qualifying period. Similar measures are included for British overseas territories citizenship.
B1.5	Amend the requirements for registration of stateless children as a British citizen	This measure introduces a new requirement for registration of a stateless child (aged 5 to 17) as a British citizen. This is that the Secretary of State must be satisfied that the child cannot reasonably acquire another nationality.

## B1.1 Address historical anomalies in nationality law (BOTC children)

### Background

10. Measure 1 will create registration routes for the children of British Overseas Territories citizens (BOTC) mothers and unmarried fathers, who were unable to acquire nationality under previous unequal legislation.

### Objectives

11. The proposed amendment to the British Nationality Act 1981 aims to resolve anomalies in legislation. As well as overcoming potential for discrimination, this measure meets the Government's strategic objective of creating safe and legal routes to citizenship.

### Current System

12. The current system means that a person born before 1 January 1983 to a BOTC mother outside of a territory did not acquire BOTC status automatically. As well as this, a person born before 1 July 2006 to a BOTC father outside of a territory did not acquire BOTC status automatically if the parents were not married. Measure 1 creates a registration route to allow individuals affected by this to acquire citizenship.

### Costs (exc. Familiarisation Costs)

13. Internal estimates suggest there might be an additional 8,000 applications in an initial burst following the introduction of this measure. 5,000 applications are expected due to women currently being unable to pass on their nationality and 3,000 as a result of resolving unmarried fathers being unable to pass on nationality<sup>38</sup>.

14. The estimated unit cost to the Home Office of naturalisation as a British citizen or British Overseas Territories citizen is £372 in 2020/21. This proposed policy therefore has estimated costs to the Home Office of **£2.98 million** in the first year. There aren't expected to be any ongoing costs of introducing this measure as additional applications are expected in the year following introduction.

### Familiarisation Costs

15. Familiarisation costs are expected to be covered in the unit cost calculations.

### Benefits

16. Applications under this measure will be free so the Home Office will gain no fee income as a result of implementing this.

17. These measures are expected to save costs due to minimising future complaints and litigations. It hasn't been possible to monetise this due a lack of data on the basis of which to estimate future complaints. The Home Office gains income after granting British citizenship due to receiving national insurance contributions and passport sales (when these are acquired). Granting citizenship will also save time and processing costs that may have occurred from Home Office Visa and Indefinite Leave to Remain applications if citizenship had not been granted.

18. There are limited direct non-monetisable benefits of modifying the British Nationality Act. However, amending legislation enhances the UK's reputation through reducing unfairness and acting to safeguard the vulnerable. This has the potential to increase social cohesion, increase law abidance, and reduce potential for discrimination. Applicants are also more inclined to maintain a good character during the build-up period to gaining citizenship and therefore less

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38 Home Office internal calculations

likely to offend. Creating a legal route to citizenship could further prevent individuals from using illegal measures to reside in the UK.

19. There are considerable benefits to the individual from having the ability to gain British Citizenship. Firstly, the individual gains the right to permanently live within the United Kingdom. Citizens are also entitled to the right to vote and run for Member of Parliament/Assembly Member/Member of Scottish Parliament/Police and Crime Commissioners/Mayoral roles and all local councils within the United Kingdom. Visa free travel to a large number countries is an additional benefit alongside help from the British embassy when overseas, including emergency travel documents and consular support. Becoming a British citizen can also bring a sense of host country amalgamation and help to instil a sense of belonging to those who gain citizenship.
20. Proposals to address historic anomalies in nationality laws may advance equality of opportunity for people who share the protected characteristic of age and race. For the same reason, these proposals may help to foster good relations between people who share these protected characteristics and those who do not. Amending the British Nationality Act has strong links to Windrush due to 90 per cent of the British Overseas Territories population living in the Caribbean. Given the current context of Windrush and Black Lives Matter movement, responding proactively to historical anomalies is highly important.

#### **Uncertainties, Risks, and Assumptions**

21. Volume estimates for measure 1 are taken from census data which is imperfect at identifying specific characteristics. The analysis also fails to factor in deaths between the time of the census (2010) and now. Therefore, volume and cost estimates are likely to be an overestimate.

## **B1.2 Address historical anomalies in nationality laws (Biological fathers)**

### **Background**

22. Measure 2 seeks to create a registration route so that a child can acquire citizenship through their biological father where the child's mother is married to someone else. This was previously a discretionary route.

### **Objectives**

23. This measure aims to amend legislation for those who were unable to become British due to their mother being married to someone other than their British biological father. This measure is particularly important given the court's ruling that the current position is incompatible with the Human Rights Act. It further meets the Government's strategic objective of providing safe and fair legal routes of entry to the UK.

### **Current System**

24. Formerly, applications under this route incurred a £1,000 registration fee which may have deterred applicants. Home Office were aware of 15 cases of this particular scenario that stayed behind original court judgement, forming a lower bound estimate for the expected number of cases.<sup>39</sup>

25. This route has recently been changed meaning that currently a child in this cohort can make a free application to the UK under a discretionary route. The number of applications since this route became free can be used as a further indication for expected applications. There were 42 applications under section 3(1) using the new form UKF(M) since 17 April 2020<sup>40</sup>. This is unlikely to be indicative of how many individuals might apply as people who have been unable to benefit since 2006 may have applied since this measure came in. This is also unlikely to be indicative as it is a discretionary rather than a specific entitlement route. This statistic does, however, provide support for the assumption that applications under this measure are likely to be low.

### **Costs (exc. Familiarisation Costs)**

26. Measure 2 seeks to replace the current discretionary route with a specific entitlement route to citizenship. Initial internal calculations estimate that 100 people will apply for citizenship in the cohort following the introduction of this measure.

27. The estimated unit cost to the Home Office of naturalisation as a British citizen or British Overseas Territories citizen is £372 in 2020/21. This proposed policy therefore has estimated costs to the Home Office of **£0.04 million** in the year following introduction. There are not expected to be any ongoing costs under measure 2.

### **Familiarisation Costs**

28. There are no expected familiarisation costs for this measure.

### **Benefits**

29. There is currently a fee waiver for this scenario, suggesting there will be no additional income to the Home Office from fees. Non-monetised benefits and wider impacts are as discussed in measure 1.

### **Uncertainties, Risks, and Assumptions**

30. Volume and cost estimates are rough estimates which take the likelihood of an individual having a British biological father from census data and thus face the same caveats as

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<sup>39</sup> Home Office internal estimates

<sup>40</sup> Home Office internal data

estimates under measure 1. Furthermore, analysis is hinged on an unevidenced 1 per cent chance of an individual having a non-British mother who was married to a non-British man at the time of childbirth. Taking this, and evidence from the current figures, it indicates that 100 additional applications is likely to be an overestimate.

### **B1.3 Address historical anomalies in nationality laws (adult registration route)**

#### **Background**

31. Measure 3 creates an adult registration route. This allows citizenship to be granted outside of the normal criteria where a person failed to become a British citizen but for: (a) historical legislative unfairness; (b) an act or omission of a public authority, or; (c) exceptional circumstances relating to P.<sup>41</sup>

#### **Objectives**

32. This proposal aims to deliver the Government's strategic objective of creating safe and legal routes for those who need them and creating a fair system to welcome the vulnerable and those most at need.

#### **Current System**

33. This is a new registration route, addressing a gap in the current system.

#### **Costs (exc. Familiarisation Costs)**

34. It has not been possible to form volume or monetised cost or benefit estimates for this route. There is lack of data, particularly surrounding how many individuals would be classed under exceptional circumstances or affected by legislation. However, as this measure is an exceptional circumstances route, it is intended to be rarely used. The intended volume effect is expected to be on this cohort.

35. Additional costs due to processing new citizenship cases will occur (£372 per case) but additional fees received (£1,000 per case) are expected to compensate for this and lead to some increases in Home Office income<sup>42</sup>. Volumes are expected to be low, so income is similarly expected to be minor.

#### **Familiarisation Costs**

36. There are no expected familiarisation costs for this measure.

#### **Benefits**

37. It has not been possible to monetise the benefits of this proposal. Non-monetised benefits and wider impacts are as discussed in measure 1.

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<sup>41</sup> P: a person of full age and capacity

<sup>42</sup> <https://www.gov.uk/government/publications/visa-fees-transparency-data>

## B1.4 Address historical anomalies in nationality laws (waiving residence requirement)

### Background

38. Measure 4 removes the requirement to have been in the UK or relevant territory at the start of the residential qualifying period for naturalisation, to prevent this being a barrier to those who would otherwise qualify in exceptional circumstances.

### Objectives

39. The objectives for this measure align with the Government's strategic objective to create safe and legal routes to welcome applications from those most at need.

### Current System

40. To qualify for citizenship as a British citizen under section 6 or section 4(2), of the British Nationality Act 1981, and to naturalise as a BOTC you will have to meet a series of residential requirements, including that you were in the UK or relevant territory at the start of your residential qualifying period. Measure 4 allows the Secretary of State to waive the requirement that a person must have been in the United Kingdom or a relevant territory at the start of the relevant qualifying period.

41. The number of people who are currently refused due to not being in the UK at the start of the qualifying period provides an indication of the volume of people who may apply under this measure. In 2019, 175 individuals were refused, and the average number of individuals refused per year between 2016 and 2019 was 181. The number of refused cases has declined since 2016, which peaked at 260 as shown in Table 1. However, this does not consider that many individuals will not apply due to knowing they would not qualify. Furthermore, we do not have any data on the proportion of individuals who are refused that would meet exceptional circumstance criteria. Therefore, estimates of the volume of individuals this measure would affect cannot be made.

**Table 1: Number of people currently refused naturalisation due to not being in UK at start of qualifying period, 2016-2020**

Source: Home Office internal data

Outcome Year	First Case Outcome	No of Cases (Rounded)
2016	Refuse R1: Not in UK at start of QP	260
2017	Refuse R1: Not in UK at start of QP	160
2018	Refuse R1: Not in UK at start of QP	130
2019	Refuse R1: Not in UK at start of QP	175
01-Jan-2020 to 30-Sep-2020	Refuse R1: Not in UK at start of QP	105

### Costs (exc. Familiarisation Costs)

42. This measure is not expected to increase the overall volume of applications but lead to applications occurring sooner rather than later. This would mean that revenue from fees, and expenditures due to processing, would be received sooner, but that overall levels would remain the same. Therefore, this measure is likely to incur few to no additional costs or income.

### Familiarisation Costs

43. There are no expected familiarisation costs for this measure.

### Benefits

44. It has not been possible to monetise the benefits of this measure. Non-monetised benefits and wider impacts are as discussed in measure 1.

## **B1.5 Amend the requirements for registration of stateless children as a British citizen**

### **Background**

45. Measure 5 amends the British Nationality Act 1981 to introduce a new requirement for registration of a stateless child (aged 5 to 17) as a British citizen. This is that the Secretary of State must be satisfied that the child cannot reasonably acquire another nationality.

### **Objectives**

46. Measure 5 aims to restrict use of the stateless child provisions to those who cannot reasonably acquire another nationality. We are aware of cases where parents choose not to take steps which would secure a nationality for their child, such as not registering the child's birth, effectively opting to make their child stateless. We think that it is right that genuinely stateless children should be able to register, but not that parents can effectively choose statelessness for their child, which can in turn can impact on their own immigration status. This measure is intended to support the Government's strategic objective of creating a firm but fair immigration system, and is intended to facilitate Government efforts to be focused to those most at need, who can be welcomed to the UK through safe and legal routes.

### **Current System**

47. Currently a child could benefit from the nationality provisions for stateless minors, even if they could have acquired nationality through a process of birth registration.

### **Costs (exc. Familiarisation Costs)**

48. There are no expected set up costs following the introduction of this measure. In 2016, around 40 cases were assessed using this route, in 2018 this increased to around 1,775, and to around 1,240 in 2019. It has been estimated that this measure will reduce cases within a range of 40 to 4,000 per year (taking the linear trend), with a central estimate of 2,000 per year.

49. The fees for children under 18 applying to be a British citizen are £1,012 per case. This suggests that the Home Office is expected to lose £2.02 million in fee income per year.

50. Limiting applications from stateless minors is likely to have reputational impacts and result in an increased number of complaints and associated litigation. It has not been possible to monetise the costs of this. The initial risk arises where parents choose not to seek to acquire their own nationality for their child.

51. There is also the possibility that additional time and processing costs will arise from people applying for stateless leave and ILR as an alternative to citizenship.

### **Familiarisation Costs**

52. There are no expected familiarisation costs for this measure.

### **Benefits**

53. It is estimated to cost the Home Office £372 to process each citizenship registration. Therefore, this measure would be expected to save the Home Office **£0.74 million** per annum.

### **Potential Unintended Consequences**

54. There is a further risk that this measure will lead to the unintended consequence of a displacement to other methods to stay in the UK, including attempts to illegally source citizenship or to reside in the UK illegally. This could potentially conflict with meeting the Government's strategic objective of ending abuse of the immigration system. However, this is not predicted to have a significant effect.

### **Uncertainties, Risks, and Assumptions**

55. These estimates are formed solely based on historical datapoints, which are insufficient to be indicative of future volumes. Hence, a range of estimates is produced, with a central estimate of 2,000 prevented applications being taken. However, additional data could inform a better estimate.

## B2: Asylum

56. Sections B2.1- B2.6 provide analysis of the following measures within the Nationality and Borders Bill:

Section	Measure Name	Overview
B2.1	Core Differentiation	This measure sets out the UK's interpretation of Article 31(1) of the Refugee Convention, introducing a differentiated approach to the treatment of refugees based on whether or not they meet the terms of Article 31(1).
B2.1.1	Changes to Family Reunion	
B2.1.2	Changes in Settlement	
B2.1.3	No Recourse to Public Funds	
B2.2	Inadmissibility and Spanish Protocol	These measures ensure that (a) those who arrive in the UK, having passed through safe countries, or who have a connection to a safe country where they could have claimed asylum; and (b) asylum claims from EU nationals can be considered inadmissible to the UK's asylum system.
B2.3	Priority Removal Notice	This measure creates the 'Priority Removal Notice' which is to be served to anyone who is liable for removal or liable for deportation. This notice also requires individuals to provide any information relating to being a victim of slavery or human trafficking
B2.3.1	Priority Removal Notice, associated legal aid and Accelerated Detained Appeals Process (ADAP)	
B2.3.2	Inclusion of Modern Slavery in 'One stop' Section 120 Notices	
B2.4	Expedited process	This measure creates an expedited appeals process whereby a claimant has a right of appeal to the Immigration and Asylum Chamber of the Upper-tier Tribunal instead of the First-tier Tribunal, where they have made a claim after the PRN cut-off date without good reason.
B2.5	Interpretation of Refugee Convention and consolidation of legislation	This measure provides definitions of key concepts in the Refugee Convention, used to determine whether an asylum seeker is a refugee within the meaning of the Convention. This includes a provision to determine whether an individual has a "well-founded fear" of persecution in accordance with Article 1(A)(2) of the Refugee Convention
B2.6	Decrease criminality thresholds	This measure reduces the threshold at which a refugee is considered to have committed a particularly serious crime.

57. There are several challenges to presenting fully quantified cost-benefit analyses of the Asylum measures within this section of the Bill, and therefore, to understanding whether the provisions represent value for money. These challenges are also risks to the efficacy of both the measures within this section and the wider policy, and include:

### **Uncertain deterrent effect**

58. Bill Part 2: Asylum seeks to deter unnecessary, and often dangerous, journeys by incentivising those in need of protection to claim asylum in the first safe country reached. However, the efficacy of these measures as a deterrent is uncertain, evidence suggests that policy changes have a limited effect on the likely behavioural response of prospective asylum seekers, compared to wider drivers for migration. Therefore, post-implementation intake volumes, which drive some of both the costs and benefits generated under the policy, are highly uncertain.

### **The interdependency of policy provisions**

59. Additionally, the intake volumes which require, for instance, age assessment (see Section B5.1 below) or are subject to a 'two-limbed' well-founded fear of persecution test (see Section B2.13 below) are dependent upon the impact of the inadmissibility policy (see Section 2.5 below). If fewer cases flow through the asylum system, as a result of inadmissible claims, all else being equal, fewer resources will be required to operationalise the other provisions within this section.

### **Third country returns agreements**

60. Inadmissible claims benefits realisation is contingent upon returns arrangements being in place with third countries. The size of the benefits generated by the policy is contingent upon the scope of the agreements reached with those third countries: the higher the number of returns agreed, the greater the benefits generated by the policy.

### **Immigration Enforcement capacity and capability to effect returns**

61. The efficacy of the policy is a function of the capacity and capability of Immigration Enforcement operations to effect returns. In a scenario where Immigration Enforcement operations are unable to return refused cases, it is assumed here that those cases will remain in the asylum system.

62. We are unable at this stage to provide analysis of the following measures within '2: Asylum', given the significant uncertainties in all of the parameters which will influence the cost and benefits of changes:

- a. **Differentiation in Accommodation** - We are currently working to define what the alternative accommodation model may look like, the cohorts of people who will reside in them and benefits (if any) which may materialise as a result of investments made in alternative accommodation.
- b. **Place of Claim** - the UK has never had in place the infrastructure to process claims made at sea; therefore, this provision is not expected to generate costs or benefits.
- c. **Good Faith**
- d. **Amend section 94 in respect of 'clearly unfounded' claims – removing the right of appeal**
- e. **Rebuttable presumption for return to safe third country**

These proposals are at too early a stage of policy development to allow for a quantitative assessment of costs and benefits. A fuller consideration of both the size and nature of costs and benefits will be developed to support operational delivery of this policy.

## B2.1 Core Differentiation

### Background

63. As part of the Nationality and Borders Bill, a differentiated approach to asylum will be established. Differentiation is part of the wider policy objective of deterring irregular migration and focusing UK resources on safe and legal routes. To do this, the policy aims to increase control over the UK's asylum intake by introducing a new 'temporary protection' status for those who could reasonably have been expected to claim asylum elsewhere but did not and those who delayed making their asylum claim once in the UK, but nonetheless qualify for protection. Other refugees will retain current entitlements and benefits.

### Objectives

64. This provision includes shortening the leave period for those granted temporary protection – from five years to 30 months (in line with ECHR Article 8 leave).  
The shortened period will present the opportunity for more regular assessment of whether return is possible. If an individual's circumstances have changed, and an individual no longer requires protection in the UK, a return would be sought (either voluntary or enforced).

### Current System

65. Published immigration statistics have been used to estimate the grants of asylum and humanitarian protection (HP), to obtain an indicative scale of volumes that would require additional reviews to be carried out. In 2019 (pre-Covid), there were approximately 13,800 grants of asylum in the UK.

### Costs (exc. Familiarisation Costs)

66. The policy change will have implications on UKVI, in terms of resource costs required to undertake additional reviews. There are likely to be additional costs imposed on other parties such as IE, for removal costs for those who are not re-granted leave to remain following review. However, this has not been captured in the current analysis but should be noted as a caveat to the analysis set out below.

67. Estimates for the additional UKVI costs of undertaking additional reviews are presented in Table 2 (2021/22 prices, discounted). Familiarisation costs are excluded. See [Summary Table 3](#) for an estimate of total costs from Core Differentiation.

**Table 2: Costs to UKVI to undertake reviews**

	21/22	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30	30/31
<b>Volume scenario - High</b>	£0	£0	£0	£600,000	£3,465,000	£3,345,000	£4,840,000	£5,450,000	£5,820,000	£8,335,000
<b>Volume scenario - Central</b>	£0	£0	£0	£525,000	£3,045,000	£2,940,000	£4,350,000	£4,925,000	£5,320,000	£7,850,000
<b>Volume scenario - Lower</b>	£0	£0	£0	£460,000	£2,670,000	£2,580,000	£3,900,000	£4,440,000	£4,845,000	£7,365,000

### Familiarisation-costs to teams involved in the review of cases

68. Case review teams will be required to become familiar with new guidance to ensure new rules are correctly applied. The new guidance is estimated to be between 20 and 50 pages in length. Assuming average reading times, familiarisation costs to caseworkers are estimated to be in the range of £0.0 million to £0.2 million over a 10-year period (2021/22 prices,

discounted)<sup>73</sup>. Further, this assumes no change to baseline caseworker headcount and that 25-75% of caseworkers will be working on processing cases under the differentiated asylum system.

69. Given the uncertainty in assumptions made, these costs are purely indicative.

### **Familiarisation costs imposed on individuals granted temporary leave**

70. The impact to individuals has been monetised by assuming

- a. All individuals granted temporary protection will read the guidance;
- b. Individuals will only read the guidance once i.e. when submitting their first review.

71. Using opportunity cost estimates from Kone et al (2019)<sup>74</sup> on the average wage of refugees, over a 10-year period, familiarisation costs to individuals are estimated to be in the range of £0.1 to £1.4 million (2021/22 prices, discounted).

72. These costs are highly uncertain and do not adjust for the employment rate of refugees.

### **Benefits**

73. This provision may impact on volumes of individuals claiming through the system. Volumes will ultimately depend on the behaviour of individuals and whether the Nationality and Borders Bill package will cause any potential deterrence effect. If the policy leads to a decrease in intake this would have benefits to the Exchequer i.e. asylum support cost savings and lower asylum processing costs.

74. There is an additional benefit generated under this proposal: review at 30-month intervals, rather than 60-month intervals, allows for quicker removal if the individual's circumstances have changed. This impact has not been monetised in the analysis.

75. A breakeven analysis approach has been used to provide an indicative estimate on what the deterrence effect *would need to be* for core differentiation to be cost-beneficial. costs associated. This assumes the unit cost of dealing with an asylum seeker covers costs associated with accommodation, cash support costs and costs of processing asylum claims. The fiscal impact associated with asylum is not included in this analysis.

76. The analysis suggests that the breakeven point is in a range of between 3000 and 4000 deterred asylum applications over the 10-year period to 2031/32. The underlying analysis is highly uncertain and purely indicative.

### **Potential Unintended Consequences**

77. This provision could result in an increase in appeals and judicial reviews if more reviews are carried out.

78. Moreover, given the provisions will make the system more restrictive for those granted temporary protection, an increase in applications before the policy comes into force could be expected. If this is significant, there may be an impact in terms of increasing the Work in Progress (WiP) and associated costs of supporting those cases. Additionally, having two systems in place after the start date of the proposal (i.e. one system for the stock of current cases and the proposed system for the new flows of asylum seekers) may result in a short run productivity disbenefit.

### **Key uncertainties associated with core differentiation**

#### ***Flows into the asylum system***

79. The flows into the system are highly dependent on the outcomes from the inadmissibility proposal. If inadmissibility deters entry and prevents individuals from entering the asylum

system, due to travel through a safe third country, there is likely to be a reduction in those people flowing into the system.

***Split of volumes in the differentiated grants***

80. The impacts set out above are dependent on the split of volumes in the lower category of leave and upper category of leave. If there are fewer (more) volumes in the lower category of leave, the resource impacts on UKVI would be lower (higher).

***Time to undertake a review***

81. There is uncertainty on how long it will take caseworkers to undertake reviews. There is also uncertainty on the proportion of cases that will be re-granted and removed.

## B2.1.1 Changes to Family Reunion

### Background

82. See Background of Section B2.1.

### Objectives

83. As set out above, those granted temporary leave will have limited rights and entitlements. This includes limiting family reunion rights to those required under Article 8 of the ECHR.

### Current System

84. Under the current system, a pre-flight partner may join an individual given refugee status or humanitarian protection if:

- a. They are married or in a civil partnership; or
- b. The individual has lived together with the partner in a relationship akin to marriage or civil partnership for at least 2 years before the sponsor left their country of former habitual residence; and
- c. They intend to live together, and the relationship is subsisting.

85. Under the current system, a pre-flight child may join an individual given refugee status or humanitarian protection if they are:

- a. Under the age of 18,
- b. Not leading an independent life, are unmarried and have not formed an independent family unit.

86. Historical volumes of grants of family reunion visas are shown in Table 3, using published immigration statistics.

**Table 3: Historical volumes of family reunion grants**

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
<b>Under 18</b>	3,300	2,900	2,400	2,600	2,800	3,000	3,600	2,700	2,600	3,700
<b>Over 18</b>	1,600	1,400	1,300	1,500	1,600	1,800	2,400	2,500	3,100	3,800
<b>Total</b>	4,900	4,300	3,700	4,100	4,500	4,800	6,000	5,200	5,700	7,500

Source: [Asylum and resettlement datasets - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/datasets/asylum-and-resettlement-datasets)

### Costs (exc. Familiarisation Costs)

87. There is a cost to individuals who would fail to demonstrate the new requirements. We anticipate the impact of a more restrictive system on volumes will be negligible given that the current family reunion criteria do not go much further than what is required under Article 8 ECHR.

88. There are high levels of uncertainty in terms of the potential impact on volumes.

89. There is expected to be a time cost to individuals to demonstrate they meet the new requirements. This has not been monetised.

90. There is expected to be a resource implication to caseworkers to review new requirements for those granted temporary protection. Given the potentially low impact on volumes and the uncertain time requirement for these considerations, this has not been monetised.

**Familiarisation Costs**

91. Guidance will be updated which caseworkers will need to familiarise themselves with. However, it is currently uncertain how long this guidance will be and what the associated time costs for caseworkers are.

**Benefits**

92. The success of this provision in terms of reducing family reunion applications for those granted temporary protection will ultimately depend on how migrant behaviour is affected. This is highly uncertain.

**Potential Unintended Consequences**

93. An equalities impact assessment will investigate the impact of this provision on protected characteristics.

**Uncertainties, Risks, and Assumptions**

94. It is uncertain what the impact on volumes will be. Additionally, it is uncertain what the case working cost to review whether the individual meets these additional requirements is and the time requirement to individuals granted temporary protection to demonstrate additional requirements.

## B2.1.2 Changes to settlement

### Background

95. See Background of Section B2.1

### Objectives

96. This provision sets out that those granted temporary protection will only be eligible to apply for settlement after 10 years in the UK on the basis of long residency. Policy changes to settlement for those granted temporary protection will include passing the Knowledge of Language and Life in the UK (KoLL) test. A fee for settlement applications will also be incurred to individuals granted temporary protection, where the application is currently subsidised by the Home Office.

97. The objective is that by limiting rights and entitlements, this could deter irregular methods of entry and late claims.

### Current System

98. Assuming volumes set out in section above for those granted temporary protection, and assuming the current eligibility criteria for settlement i.e. individuals can apply after 5 years of living in the UK, volumes for settlement applications are set out in Table 4. This assumes 100% of individuals granted temporary protection will apply for settlement once eligible and there is no lag i.e. individuals will apply as soon as they are eligible, and so provides an upper range estimate if some of those granted temporary protection are not re-granted on review.

**Table 4: Volumes of settlement applications, using current settlement eligibility criteria (upper range)**

	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32
Settlement volumes granted temporary protection using current eligibility criteria, high scenario	-	-	-	-	-	8,000	10,000	10,000	10,000	10,000
Settlement volumes granted temporary protection using current eligibility criteria, central scenario	-	-	-	-	-	7,000	9,000	9,000	9,000	9,000
Settlement volumes granted temporary protection using current eligibility criteria, lower scenario	-	-	-	-	-	6,000	8,000	8,000	8,000	8,000

### Costs (exc. Familiarisation Costs)

99. The impact of increasing the period of residency required in the UK prior to applying for settlement from 5 to 10 years is extremely uncertain. From a UKVI resource perspective, it is thought extending the period could delay applications.

100. The imposition of a fee may deter some refugees from applying for settlement. However, we would expect refugees to be very price inelastic i.e. individuals would not change their behaviour due to the imposition of a fee, given the cost associated with moving from their country of origin and the fact they will have lived and settled in to live in the UK for 10 years. However, given refugee wage rates and employment rates, affordability is likely to be an issue.

101. Moreover, the extension of the period from five to ten years before which a recognised refugee can apply for settlement will have a cost to the individual. Indeed, this results in an

additional five years for which the individual will be recognised as a refugee for a time constrained period, as opposed to being granted indefinite leave to remain. This imposes a cost to individuals in terms of a longer amount of time they are working in the UK with restrictions, potentially having an impact on their wellbeing.

**Familiarisation Costs**

102. Refugees granted temporary protection applying for settlement will be subject to English language requirements and pass the life in the UK test. This is likely to impose a time cost on individuals. The fee to book the life in the UK is £50 per test. This represents a cost to individuals granted temporary protection. Assuming all refugees take the test and purchase the life in the UK handbook in preparation for the test, there is an estimated £56.83 cost per individual.

**Table 5: Fees for KoLL test**

Fee	£50
Life in the UK test Handbook	£6.83

103. In addition to costs outlined above, there will be a time cost. Table 6 outlines the time requirements for refugees to prepare for the life in the UK test. The time to read the UK handbook has been used as a proxy to prepare for the life in the UK test<sup>43</sup>. The time to read the handbook is estimated to be in the range of two to 14 hours, per individual. In reality, it is likely the preparation for the life in the UK test will require other revision (such as taking practice tests) which will differ by the individual. This is not captured in the estimates set out below.

104. The individual will also need to take time to take the test. In total, the time cost per individual is estimated to be in the range of three to 14 hours.

**Table 6 – Time requirements**

	Lower	Central	High
Time to read handbook (minutes)	818	281	113
Time to take the test (minutes)	45	45	45

105. The analysis above has adjusted for the pass rate, which, using published Home Office statistics is ~75%. This is likely to be an upper estimate given this includes results from EU countries which have a relatively higher pass rate and have therefore driven the average up.

106. Given the proposal increases the period required in the UK prior to applying for settlement from 5 years to 10 years for those granted temporary protection, the costs outlined above are expected to arise only 10 years after the policy implementation.

107. The imposition of the KoLL test is likely to have an equalities impact, in terms of protected characteristics. For example, an individual with a learning disability may find it more difficult to engage with the reformed system and sit the KoLL test. Further analysis is needed to understand what these impacts may be. The extent to which individuals will be affected by English language requirements for those granted temporary protection is dependent on their

43 Reading times have been taken from <http://www.readingsoft.com/>

acquisition of English language and their integration in UK society prior to applying for settlement.

### Benefits

108. The success of this provision in terms of reducing settlement applications for those granted temporary protection will ultimately depend on how migrant behaviour is affected. This is highly uncertain and will ultimately depend on whether there is a behavioural response, and whether some individuals would be cut off from settlement due to the imposition of language and the KoLL test requirements.
109. This proposal has the benefit of reducing the category of people who have a legal right to be in the UK but have no prospect of learning English, a key requirement for integration in UK society.
110. In addition, due to the delay in settlement applications, there is expected to be a benefit to the Home Office over the 10-year appraisal period due to a reduction in processing costs. Using published estimates on processing costs, the impact has been monetised in Table 7. These estimates are highly uncertain due to underlying assumptions on volumes under the current settlement eligibility criteria. The estimates are presented in 21/22 prices and have been discounted, in line with HMT Green Book Guidance.

**Table 7: Reduction in processing costs, benefit to the Home Office**

	21/22	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30	30/31
Reduction in processing costs, high scenario	£0	£0	£0	£0	£0	£1,530,000	£1,970,000	£1,900,000	£1,835,000	£1,770,000
Reduction in processing costs, central scenario	£0	£0	£0	£0	£0	£1,370,000	£1,760,000	£1,700,000	£1,640,000	£1,585,000
Reduction in processing costs, lower scenario	£0	£0	£0	£0	£0	£1,220,000	£1,570,000	£1,515,000	£1,465,000	£1,410,000

### Potential Unintended Consequences

111. There may be an equalities impact of this provision in relation to those granted temporary protection. The introduction of language requirements will have different effects depending on their protected characteristics. This impact is unknown at this stage and an equalities impact assessment is required to understand the impacts across different protected characteristics.

### Uncertainties, Risks, and Assumptions

112. Key uncertainties are whether the imposition of a fee would deter settlement applications from refugees.
113. Language requirements have never been imposed on asylum seekers, therefore, making the system more restrictive and it is not possible to estimate the proportion cut off (and therefore no longer eligible) for settlement. The impact of imposing language requirements on asylum seekers is therefore highly uncertain.
114. This provision needs to be considered in conjunction with the provision on changing the length of leave from five years to 30 months, as there is likely to be an impact on ILR volumes in the baseline through more regular reviews for those granted temporary protection.

### **B2.1.3 No recourse to public funds**

#### **Background**

115. See Background of Section B2.1

#### **Objectives**

116. The objective of this reform is to target the provision of recourse to public funds to those that need it to avoid destitution. Individuals would be assessed for destitution and be able to apply for a no recourse to public funds (NRPF) condition to be lifted where their circumstances changed (in line with the Article 8 Family and Private Life route).
117. Those granted temporary protection will have full access to the labour market, to reduce their dependency on the state, thereby increasing self-sufficiency.

#### **Current System**

118. Under the current system, individuals who have been granted refugee status in the UK can access public funds. The proposal is to consider whether to give recourse to public funds at the point of making the immigration decision. An individual could also apply for the NRPF condition to be lifted if the individuals' circumstances have changed.

#### **Costs (exc. Familiarisation Costs)**

119. There will be costs to UKVI in case processing whether an individual requires RPF at the point of grant and those individuals who apply for the NRPF condition to be lifted. Given there are no restrictions currently in place, the impact is highly uncertain.
120. There is a lag between making a claim for the NRPF to be lifted and receiving a decision. This is likely to impose costs onto other parties, such as Local Authorities, the NHS, charities, and other public bodies; government support will be provided to individuals complying with removal efforts.

#### **Familiarisation Costs**

121. Familiarisation costs under this policy proposal include guidance and training for caseworkers to understand the new process. There is a high degree of uncertainty around the associated costs and as such the impact has not been monetised in the analysis.
122. Familiarisation costs will be imposed on individuals to understand how to apply for a change in conditions. There is a high degree of uncertainty around the number of individuals that would apply for a change in circumstances; and such, the impact has not been monetised in the analysis.

#### **Benefits**

123. There is likely to be a benefit to the Exchequer and the taxpayer through the protection of public funds. The impact will ultimately depend on the volumes of individuals granted temporary protection, as well as the proportion of those claiming for the NRPF condition to be lifted.

#### **Potential Unintended Consequences**

124. Despite recourse to public funds provisions for those facing destitution, an increase in homelessness may result if decisions are not made in a timely manner on change of conditions requests. A 2012 evidence review carried out by MHCLG found that the estimated annual cost to government from homelessness is in the range of £24,000 to £30,000. The costs are driven by factors including benefit payments, employment programmes, expenditure on homelessness and healthcare costs.

**Uncertainties, Risks, and Assumptions**

125. It is uncertain what the volume would be of those applying for the NRPF provision to be lifted and therefore what the increase in case working requirements would be.

## **B2.2 Inadmissibility and Spanish Protocol**

### **Background**

126. See Current System section below.

### **Objective**

127. This provision aims to encourage asylum seekers to claim asylum in the first safe country they reach and deter onward travel to the UK by incorporating Immigration Rules, which were introduced in December 2020, on both third country inadmissibility and EU claimant inadmissibility (the Spanish Protocol) into primary legislation.

128. It also aims to reduce the incidence, and therefore costs, of irregular entry, and increase the legislative power to rapidly return applicants.

129. Under the Immigration Rules introduced in December 2020, applicants making asylum applications which are deemed to be inadmissible, as a result of the applicant having passed through, or having a connection with, a safe third country where they have previously claimed asylum, or had an opportunity to, are returned to any safe country willing to accept the applicant.

### **Current System**

130. Where evidence suggests that an asylum applicant has passed through or has a connection with a safe country where they have previously claimed asylum, or had an opportunity to, their case is referred to the Third Country Unit in the Home Office. Where an EU national makes a claim for asylum, their case is also referred to the Third Country Unit.

131. The Third Country Unit is responsible for making all decisions on inadmissibility grounds. If the Home Office decides an asylum applicant can be returned to a safe third country, or is an EU national, it will not substantively consider the asylum claim and will instead pursue the person's return to that country or any other safe country that is willing to accept them.

132. The Home Office considers a 'safe third country' to be a country:

- a. of which the individual seeking asylum is not a national or a citizen; and
- b. in which the person's life or liberty is not threatened by reason of race, religion, nationality, membership of a particular social group, or political opinion.

133. It is also a country from which a person will not be sent to another state in contravention of his or her rights under the Refugee Convention.

### **Costs**

134. In a scenario where the deterrent effect of inadmissibility in particular and/or asylum reforms more generally is insufficient to reduce asylum intake volumes below current levels, this provision is likely to increase Home Office resource requirements within key units of Asylum and Protection (A&P) and Immigration Enforcement (IE) operations; in particular:

- a) A&P – National Asylum Intake Unit (NAIU) and National Asylum Allocation Unit (NAAU).
- b) IE – Third Country Unit (TCU).

### **One-off Home Office resource costs**

135. Inadmissibility is likely to have generated one-off Home Office resource costs in the form of case worker familiarisation and training costs. Caseworkers needed to become familiar with the legislative change and the caseworker guidance issued. Additionally, caseworkers are required to undergo training in order to understand how to appropriately apply new guidance.

### **Recurring Home Office resource costs**

136. Assuming no change to overall operational efficiency of the asylum system, inadmissibility will increase full-time equivalent (FTE) resource requirements as follows:
- a. **Screening** - NAIU, IE and BF will adapt their screening processes. These adaptations increase the time required for the screening of each new asylum applicant, which, in turn, will increase the FTE requirement within NAIU, IE and BF.
  - b. **Triage** – NAAU will be required to review inadmissibility evidence before considering whether cases are suitable for TCU.
  - c. **Inadmissibility decision-making** – TCU volume intake is likely to increase, and inadmissibility decisions are likely to require greater analysis and internal scrutiny; the latter effect is likely to increase the average pay grade of TCU staff.
  - d. **Safeguarding** – the longer an individual asylum case remains in the asylum decision-making system, the more likely the applicant is to raise a safeguarding issue, which will require the support of the Asylum Safeguarding Hub.
  - e. **Appeals and human rights applications** – inadmissible claims, particularly those that lead to return actions, are likely to be subject to appeal and human rights applications<sup>37</sup>.
  - f. **Returns** – if inadmissible claims result in the instigation of additional return actions, the detention and return costs borne by IE are likely to increase against the baseline. The marginal cost of enforced return is estimated to be £4,400 with a sensitivity range of £2,500-£7,000.<sup>38</sup>

### Benefits

137. Benefits realisation for inadmissibility is critically dependent upon the return of claimants who, in the Do Nothing, would remain within the asylum decision-making system. Where inadmissible claims result in additional returns, benefits in the form of avoided asylum support costs, would be generated by:
- a. **Reducing average asylum support costs per claimant** – as a result of asylum support costs being paid to applicants ultimately subject to return action over a shorter time period, and, therefore;
  - b. **Reducing overall asylum support costs to the Exchequer** - as a result of returns reducing the number of claimants eligible for asylum support relative to the baseline.

138. As mentioned above, benefits would be increased further in a scenario where inadmissibility deterred irregular entry.

### Unintended consequences

139. The net effects of inadmissible claims would be reduced further by any unintended effects of the policy, which could include:
- **Increased absconsion risk** – where inadmissibility increases the number of absconders, this is likely to have fiscal disbenefits as a result of increased use of public services (including as a result of destitution), ‘black’ economy labour supply.
  - **Increased vulnerable and UASC caseload** – inadmissibility may increase claimants’ incentives to make (legitimate or illegitimate) UASC claims (as USAC are exempt from the inadmissibility process), which will have associated additional Home Office resource and asylum support costs.

## **B2.3 Priority Removal Notice**

140. This measure creates an expedited appeals process whereby a claimant has a right of appeal to the Immigration and Asylum Chamber of the Upper-tier Tribunal instead of the First-tier Tribunal, where they have made a claim after the PRN cut-off date without good reason. Sections B2.3.1 and B2.3.2 contain analysis of these aspects of the measure.

### **B2.3.1 Priority Removal Notice (PRN), associated access to legal aid (LA) and Expedited Judicial Process (EJP)**

#### **Background**

141. Repeated claims, sometimes made at the very last minute, can frustrate the removal of people with no right to be in the UK – including the removal of Foreign National Offenders (FNOs). Multiple Home Office and judicial decisions are not good for the claimant - it fails to provide him/her with a resolution to their situation; and it is not good for the taxpayer – the processes involved consume resource.

142. The Priority Removal Notice (PRN) will be issued to individuals identified as suitable for removal action in the next 1-3 months, assuming no further barriers. Such a person may be on reporting or may have outstanding claims not yet considered. S/he can receive legal aid to understand the PRN and their potential next steps, and then may receive further legal aid to bring any relevant claims.

143. The PRN will have two time-related conditions attached to it:

- i. The claim period: this will be a specified period [likely to be 1-3 months] during which the individual will be able to access the legal aid advice offer and submit any relevant applications or claims to the Home Office.
- ii. The validity period: this will be a specified period [likely to be 12 months] that will commence once the claim period ends – during which any further claims made by the individual, if certified or refused with no right of appeal, will be subject to the EJP (Expedited Judicial Process).

144. If an individual brings a claim in response to the PRN within the claim period then his or her rights will not be different to present, in that they will proceed via the normal First-tier Tribunal (FtT) > Upper Tribunal (UT) appeal route. However, for out of time claims refused with a right of appeal, the individual will receive an in-country appeal directly to the Upper Tribunal (UT). Additionally, where claims are brought out of time, and are refused and certified as having no right of appeal, if a Judicial Review succeeds in overturning that certification decision there will be a right of appeal to the UT.

#### **Objectives**

145. The purpose of the reforms is to shorten the process experienced by individuals whom the Home Office intends to remove. The reforms may improve the quality and coherency of an individual's argument through access to legally aided lawyers, reducing the numbers of litigants-in-person. The reforms should also help to bring the individual's case to resolution sooner and reduce the associated resource burden on the taxpayer.

#### **Current System**

146. Priority Removal Notices are being introduced to cover a range of claims including Modern Slavery, Human rights, and protection claims. In addition, legal aid is only available for a prescribed list of civil legal services set out in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) and an individual must pass means and merits tests. This reform means that legal aid will be available to all those who receive a PRN, irrespective of their financial eligibility, for a limited period of time.

## **Costs**

147. Assuming that the PRN will be issued to those whom we intend to detain on reporting and FNOs to be removed, then as many as 11,000 individuals might receive a PRN per year, assuming that enforcement activity returns to pre-pandemic levels.
148. Such a volume of notices, if issued every year, might cost around £4m per year in legal aid spend, based on an average of around 5 hours of legal advice being provided and associated spend on provider travel and disbursements (or given uncertainty in advice and travel time and disbursement use we have estimated lower and higher scenarios of £1.9m and £6.3m). This represents a total discounted cost of between £11.8m and £39.8m over the 10-year appraisal period, with a best estimate of £24.8m. Further legal aid may be granted to eligible individuals with an in-scope matter listed in LASPO 2012, but we have not costed this as we do not know how many of these could be new claims as opposed to claims brought at a different time.

## **Benefits**

149. The PRN should reduce the length of time a migrant interacts with the Home Office as the individual approaches removal, assuming that claimants bring forward higher quality claims because of the legal aid offer so that judicial processes can resolve a person's situation as speedily as possible.
150. If the PRN does result in claims being brought forward before detention, then there will also be costs avoided in the unnecessary use of the detention estate. These have not been quantified.

## **Potential Unintended Consequences**

151. The PRN when issued to those whom the Home Office plans to detain on reporting could increase absconding rates and reduce the number of removal directions issued on removable people. However, such people already receive similar notices at present so the impact cannot be quantified.

## **Uncertainties, Risks, and Assumptions**

152. Described above.
153. We count FNOs and those detained on reporting (DoRs) whom we assume the Home Office will be minded to remove in the time window. 2,646 people were detained on reporting in the 6 months from Apr-Sep 2016 (Border report). 5,921 FNOs were held in detention in 2019 (Issued Raised in Detention report).

## B2.3.2 Inclusion of Modern Slavery in ‘One stop process’

### Background

154. The Section 120 “one-stop notice” streamlines asylum, human rights, and any other protection matters by considering them together in a single integrated process. The legislation will add modern slavery claims to the process by creating a “slavery and trafficking notice” requiring information to be provided within a specified time scale to those served with a section 120 notice.

155. At present, Modern Slavery (MS) concerns are treated as a separate matter from immigration and protection decisions. As such, potential victims of MS are identified at various different points throughout their interactions with the Home Office, lengthening the time to a resolution of their situation and presenting further barriers to removal if unfounded claims are raised later on. In 2020, 3390 NRM referrals were made by the Home Office.<sup>44</sup>

### Objectives

156. The primary aim for the Priority Removal Notice is to improve decision-making on these disparate applications by ensuring they are processed concurrently and as efficiently and effectively as possible. In this way, those genuinely in need of protection, assistance and support are identified as quickly as possible and their individual needs are assessed and responded to accordingly in order to facilitate their integration and/or recovery, as appropriate. It is also to relieve pressure being put on the courts and removal system by those who make repeated and/or improper claims, including those falsely claiming they are victims of modern slavery. This causes unnecessary delays and backlogs within the relevant systems, at great public expense. It also frustrates the removal of those with no legal right to be in the UK, making those who are genuine victims wait longer for decisions on their cases.

157. An ancillary aim is to provide greater clarity with respect to public order and improper claim definitions so that those who are not entitled to protection, assistance or support are identified as early as possible. Using robust and reliable criteria, these individuals will be properly identified and subsequently removed from the relevant decision system and diverted to the appropriate alternative process, such as investigation, prosecution, detention, or removal.

### Current System

158. In the current system, MS concerns are treated as a separate matter from immigration and protection decisions and processed through the NRM as overseen by the Single Competent Authority (SCA) based in the Home Office. The Section 120 ‘One Stop Notice’ currently issued does not include Modern Slavery matters.

159. The current MS/NRM system operates separately from the asylum and immigration systems. It processes all cases, regardless of immigration status, according to the same rules. Potential Victims of MS can be UK nationals, foreign nationals, those who hold dual UK and other national citizenship, or have some other irregular status. Victims whose exploitation takes place in the UK and/or abroad can be referred to the NRM. Many but by no means all of those referred to the NRM are irregular migrants, in 2020 British Nationals made up the highest percentage of referrals accounting for 34% of them. Many of those who are irregular migrants (but not all) will also be applying for asylum in the UK. The current system processes NRM referrals for individuals who are foreign nationals (including foreign national offenders and/or those applying from detention), those with irregular migration status, and asylum seekers the same as PV who are UK nationals. When an individual with irregular migration status claims that they are a victim of MS and is referred to the NRM, any outstanding application for asylum or other form of protection is paused until the NRM decision is made. Some MS referrals are requested by individuals whose applications for asylum, or previous referrals as a victim of

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<sup>44</sup> This includes UKBF, UKVI and IE.

trafficking, have failed. Although claims can be made at any stage of the removal process, it is not uncommon for these (repeated) claims to be made at the final stages of removal and there is concern these claims can be used to frustrate immigration action. This puts pressure on the system and its limited resources and can cause significant expense and delays.

160. There is currently no explicit definition identifying individuals who under the Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT) are exempt from the benefits and protections afforded by the NRM on the grounds of posing a threat to public order or claiming improperly, hence their cases are normally processed through the system. Access to a complex system of reconsiderations and Judicial Reviews is currently available to all Potential Victims.

161. Processing these to all potential victims contributes to the significant current expense and delays.

### **Costs (exc. Familiarisation Costs)**

162. There would likely be costs associated with implementing this legislation. These costs will fall to the Single Competent Authority (SCA).

163. There are 3 common ways in which a potential victim of MS may be identified in the immigration system: (i) in detention, (ii) on entering irregularly and (iii) during an asylum interview. In 2019 there were 4,300 NRM referrals linked to immigration events.

164. The upper scenario includes potential impacts where people are more likely to be referred as potential victims of modern slavery following an immigration event. Under this scenario, immigration officials are assumed to proactively ask about modern slavery rather than waiting for an individual to raise it. The extent of the change in referral volumes is difficult to estimate, being dependent on many factors including how questions are worded to individuals when asking about modern slavery. If we assume referrals linked to immigration events doubled following the change in legislation, then there would be an increase in NRM referrals linked to immigration events - to approximately 7,600 per year.

165. In the central scenario it is assumed the inclusion of modern slavery in the One Stop process has no impact on referral volumes, and therefore no additional costs or benefits would arise.

166. The lower scenario assumes referral rates continue as they are now, but accounts for a possible reduction in the number of events where a potential victim may be identified decrease, as a result of other NPI proposals. Again, it would be difficult to accurately estimate by how much but if we assumed an 8% reduction, then referrals linked to immigration events would decrease to approximately 3,500 per year. However, some of these would also be from FNOs who may be less likely to get referred following the legislation to define public order grounds. See benefits section for impacts.

### **Costs to the SCA (MSVCC)**

167. In the high impact scenario, NRM referrals increase by 3,300 per annum. If NRM referrals increased, there is likely to be an increase in cost to the Modern Slavery Victim Care Contract (MSVCC) as increased referrals will result in potentially more victims being entitled to the support that a potential victim can access following a positive RG decision. Support can include accommodation, financial support, a support worker, and other support listed in the Modern Slavery Act 2015 Statutory Guidance. The amount of financial support an individual receives is dependent on their circumstances but currently ranges from £35 per week to £65 as stated in the Statutory Guidance. Additional payments can also be made for any dependents. A potential victim is currently entitled to this support in line with their recovery needs, which is currently until their CG decision at the earliest. In 2020 the median length of time between an RG and

CG decision was 339 days and 90% of referrals results in a positive RG decision. For every additional person who is referred and receives a positive RG there is an additional cost from financial support payments of around £3,000<sup>45</sup> per person. There would then be additional costs of accommodation, which is estimated to be £28<sup>46</sup> per night. There is therefore a potential estimated additional cost to the MSVCC of up to £9,500 per person receiving accommodation support following the introduction of the measure. From published statistics, an estimate of around 48%<sup>47</sup> of NRM referrals enter the MSVCC. Therefore, there would be an average additional cost of £13M per year across the appraisal period. Table 8 illustrates the estimated annual additional costs to the SCA (MSVCC) under the high impact scenario. Table 9 illustrates the impact under the low scenario. Under the medium impact scenario, costs are estimated to be neutral.<sup>48</sup>

**Table 8: Estimated annual additional costs (£m) to the SCA (MSVCC), 2021-2031. High Impact Scenario.**

Year	Total Discounted Cost (£m)
2021/22	£0
2022/23	£16.6
2023/24	£16.1
2024/25	£15.5
2025/26	£14.9
2026/27	£14.4
2027/28	£13.9
2028/29	£13.4
2029/30	£13.0
2030/31	£12.5
Annual Average	£13.0
<b>Total Costs</b>	<b>£130.4</b>

### Costs to the SCA (decision-making resource)

168. With more referrals needing decisions made there will be a resource impact on the SCA who process referrals into the NRM. The operational impact of this will be linked to wider work on understanding the impact across all the modern slavery measures within the legislation on the SCA and the steps needed to operationalise them.

### Familiarisation Costs

169. There are likely to be familiarisation costs for current decision makers having to read and learn the new legislation and exemptions. The guidance hasn't been finalised yet, but if it was approximately 5 pages long it would take around 20 to 35 minutes for a decision maker to read, at a cost of £6<sup>17</sup> per decision maker. There are currently 92 decision makers in the SCA so there would be a familiarisation cost of approximately £600. The SCA are recruiting around 250 decision makers in 2021 therefore there will be additional costs of £1,500 resulting in familiarisations costs of approximately £2,100 in total.

### Benefits

<sup>45</sup> = (339/7) \*£65 = £3,100

<sup>46</sup> This is the average across all price bands of accommodation per night per person as contracted with the Salvation Army

<sup>47</sup> Calculated by taking the number of entrants to the VCC & NRM who had a positive RG in 2019, scaling the NRM data down by 7.5% for victims in Scotland and Northern Ireland as they have separate support systems

<sup>48</sup> Referral volumes in the medium impact scenario are estimated to remain in line with 2019 volumes. See Annex C, Section 3.8.

170. We expect benefits to arise from this measure: (i) benefits to victims, (ii) SCA cost reductions (iii) Operational efficiencies.

**Benefits to Victims**

171. There may be a benefit to victims who following the legislative change are now referred into the NRM and receive support for their exploitation. We do not know the impact the support has on a victim in terms of recovery time but there may be a reduction in an individual's physical and emotional harm after entering the MSVCC.

**Reduced costs to the SCA (MSVCC)**

172. In the low scenario referrals are estimated to decrease by 800 per year. Following this there would be reduced costs to the MSCC as fewer potential victims would enter to receive support.

173. There would be reduced costs of accommodation, which is estimated to be £28<sup>49</sup> per night, and financial support, which is estimated to be £9 per day.<sup>50</sup> Therefore, there is a potential estimated reduced cost to the MSVCC of up to £9,500 per person receiving accommodation support and around £3,000 per person from reduced financial support payments following the introduction of the measure.

174. Therefore, there could be an estimated average yearly benefit of £3.2M in total across each year of the appraisal period.<sup>51</sup>

**Table 9: Estimated annual reduction in costs (£m) to the SCA (MSVCC),2021-2031.**

Year	Total Discounted Benefits (£m)
2021/22	£0
2022/23	£4.0
2023/24	£3.9
2024/25	£3.8
2025/26	£3.6
2026/27	£3.5
2027/28	£3.4
2028/29	£3.3
2029/30	£3.1
2030/31	£3.0
Average Yearly Total	£3.2
<b>Total</b>	<b>£31.6</b>

**Reduced costs to the SCA (decision-making resource)**

175. In the lower scenario there would be fewer referrals, meaning less decisions to be made by the SCA who process referrals into the NRM. The operational impact of this will be linked to wider work on understanding the impact across all the modern slavery measures within the legislation on the SCA and the steps needed to operationalise them.

<sup>49</sup> This is the average across all price bands of accommodation per night per person as contracted with the Salvation Army

<sup>50</sup> £65 per week = £9 per day

<sup>51</sup> (£9,500 + £3,000) \* 800 referrals = £10m. Only a proportion (90%) of the reduction in NRM referrals will go onto receive a positive reasonable ground decision and only a proportion of those will go onto receive MSVCC support (48%). This will reduce the £10m to £4.3m (undiscounted), £3.2m (discounted).

### **Operational Efficiencies**

176. There are potential operational efficiencies from this measure with all claims being dealt with at one time and potentially earlier in the process which means there will be less delay in asylum claims due to the interdependencies between modern slavery and asylum claims.

### **Potential Unintended Consequences**

177. Notwithstanding any changes in referral rates or overall volumes, the S120 reforms covering modern slavery might also result in individuals being referred at a different point in their migrant journey if the inclusion of Modern Slavery results in NRM referrals being made sooner then there might be an initial surge in demand following the introduction of the reform.

### **Uncertainties, Risks, and Assumptions**

178. The impact of the legislation on the volume of NRM referrals is unknown. Two scenarios have been modelled to capture this uncertainty.

179. In the higher scenario we have assumed referrals from detention increase to 7,600 per year and in the lower scenario they decrease to 3,500 per year.

## **B2.4 Accelerated Detained Appeals**

### **Background**

178. From early 2000 until July 2015, the Home Office operated a Detained Fast Track (DFT) process, which provided for the detention of an asylum claimant on the basis that their claim appeared to be one in which a quick decision could be made. Timescales were highly compressed (approx. 10-14 days) and in 2003 an accelerated appeal process was established. The DFT process was under intense scrutiny from NGOs due to the tight timescales and the limitations on accessing enough legal advice. Additionally, the number of cases that entered the DFT process as a proportion of total asylum cases accelerated from 6% of asylum cases in 2007 to a peak of 20% (1 in 5 cases) in 2012.

179. Consequently, in 2015, the high court made a decision to stop the most recent iteration of DFT. Appellants were found to have been given too little time to prepare their case, and safeguards were deemed insufficient. However, the courts did not find the principle of an expedited process unlawful. This new detained appeals process seeks to introduce a process that is fast enough to enable appeals to be decided while a person is detained, while providing sufficient safeguards and flexibility to ensure fairness.

### **Objectives**

180. Immigration and asylum appeals are currently heard under the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. The same procedures apply to all IAC appeals, whether the appellant is detained or not. While appeals involving detained appellants are prioritised by HMCTS under the Detained Immigration Appeals (DIA) approach, there is no fixed timeframe. In 2018/19 it took 10.5 weeks on average from receipt of an appeal to its determination in the First-tier Tribunal (FtT). In some cases, appellants are detained for months pending appeal. In others, the Home Office (HO) has to release an appellant if there is no prospect of return in a reasonable time frame due to the length of time before their appeal is listed for hearing.

181. Improving the speed and certainty of the appeals process would make it less likely that people are released pending their appeal. This would enable more efficient use of the detention and court estate. It would support quicker return of those with no right to remain by reducing the risk of absconding. It would also benefit appellants: those whose appeals are successful would be released earlier and those who are unsuccessful would benefit from a final determination as to their immigration status.

### **Current System**

182. Following the suspension of the DFT, Detained Asylum Casework (DAC) was immediately introduced to deliver some continuity in processing detained asylum cases, from claim, interview, decision, and appeal through to returns. DAC is most different to the DFT in the timescales involved with the asylum process. Unlike the DFT which has an expedited process, DAC has greater flexibility in timescales and access to legal representation and the category of cases under the DFT is much narrower. More specifically, the DAC team operates to an indicative timetable for interviewing claimants and deciding their asylum claim. This timetable exists to support case progression, to help minimise the time an individual is detained. However, this timetable is not rigid. Flexibility is exercised in the asylum process where fairness demands it, with claimants given additional time whenever it is appropriate.

183. The current Detained Asylum Casework framework applies the general detention criteria for cases where an asylum claim is made within detention, however few cases reach conclusion whilst detained due to lengthy timescales for appeals, and other complicating issues such as: vulnerability, the submission of Medico Legal Reports and Modern Slavery referrals.

## **Costs (exc. Familiarisation Costs)**

### ***Increased Returns***

184. Work has gone into modelling scenarios of the impacts of the New Plan for Immigration, including the impacts of the reintroduction of the new Accelerated Appeals Process for Detained Claimants. The assumptions used in this system modelling have been derived from the expert opinions of operational colleagues. By applying these assumptions, we expect the Accelerated Appeals Process could lead to an increase in returns. To illustrate potential impacts the system modelling assumes two scenarios: A high impact and a low impact scenario.

### **Monetised costs**

185. The main direct costs from this measure will be the increased number of returns. Analysis conducted by Home Office Analysis & Insight estimates the average marginal cost of an enforced return to be in the range of £2,500-£7,000 with a central estimate of c.£4,400<sup>94</sup>. Internal analysis, based on past iterations of DFT, suggest that the measure could facilitate returns. However, there is likely to be overlaps across the system and there is a lot of uncertainty on how much each individual measure contributes to the overall increase in return numbers (and total costs) in the overarching IA. This makes it hard to attribute an exact estimate for increased costs explicitly linked to Accelerated Detained Appeals.

### ***Legal Challenge Costs***

186. A potential cost of this measure includes the cost of experiencing legal challenge in the future. As outlined in the section on uncertainties, risks and assumptions, DFT underwent intense scrutiny and has in the past been suspended. There is a risk of legal challenge despite the greater flexibility that this new expedited process offers.

187. Previous legal challenges have come at a monetary cost, particularly the combined cost of the High Court and Court of appeals litigation, which includes costs related to the legal fees the Home Office had to pay to claimants to cover their legal costs. However, these costs have not been published to the public domain and therefore have not been included.

### **Familiarisation Costs**

188. There are no expected familiarisation costs.

### **Benefits**

189. As set out in the costs section above, due to the potential increase in the number of returns, there will be a benefit associated with avoiding costs associated with those irregular migrants remaining in the UK. We have not been able to monetise this cost for the impact assessment.

### ***Detention Efficiency***

190. As set out, due to wider changes in the New Plan for Immigration Bill, there will be an impact on the number of beds we're able to use in the detention estate. Whilst in the high scenario we estimate the number of detention beds at any given time to be used by the new expedited process to fall by c.110 beds, we estimate the number of returns per occupied bed per annum to increase. This shows that the implementation of this measure can potentially help to free up bed space whilst increasing returns, creating a more efficient detention estate. This is also borne out in the low scenario, where we also see an increase in the number of returns per occupied bed per annum. Greater efficiency in the detention estate, also gives the Home Office the added benefit of allowing greater flexibility in the estate.

### ***Reduction in Asylum support costs***

191. In addition to impacts on the detention and returns volumes, we would also expect an impact on the number of asylum claims within detention. As seen above, the number of asylum claims coming from within detention will fall as a consequence of the deterrent effect of this measure, which disincentives individuals from making an asylum claim.

## **Potential Unintended Consequences**

### ***Displacement effect***

192. An unintended consequence could be that individuals may take up other avenues to seek to remain in the UK. For example, there may be an increase in the number of medico legal reports submitted, NRM referrals or lodged Judicial Reviews. Types of barriers raised in detention is discussed in more detail in a recent Home Office publication on *Issues raised by people facing return in immigration detention*<sup>65</sup>.

### **Uncertainties, Risks, and Assumptions**

193. Legal challenge - Although this new proposed system will allow more flexibility, there is still a risk that The Home Office could face legal challenge.

## B2.5 Interpretation of Refugee Convention

### Background and Objective

180. There are two discrete strands to this provision:

- a. The introduction of a 'two-limbed' 'well-founded fear' test to determine whether a claimant is a refugee, and;
- b. The consolidation of UK asylum legislation by defining the key concepts of the Refugee Convention.

**Introduction of a 'two-limbed' 'well-founded fear' test** - This provision will legislate for a clearly defined 'two-limbed' test to determine whether a claimant has a 'well-founded fear of persecution', which will include:

- a. **a subjective test** - to consider whether the claimant is more likely than not (on the balance of probabilities) to have a fear of persecution on account of one or more of the reasons contained in the Refugee Convention 1951, and<sup>57</sup>;
- b. **an objective test** - to consider whether the fear of persecution (if accepted as a result of the subjective test) would, to a reasonable degree of likelihood, manifest upon return to the country of origin (including consideration of sufficiency of protection and internal relocation).

181. The credibility of claims is already tested during the asylum claim assessment. The 'two-limbed' test increases the standard of proof that claimants are required to meet for the subjective element of the test in order to demonstrate that they are a refugee. As a result, the provision is intended to ensure that only those who genuinely require protection qualify are granted protection in the UK.

### Consolidation of UK asylum legislation

182. This provision also seeks to consolidate UK asylum legislation by:

1. defining the key concepts of the Refugee Convention in primary legislation; and;
2. updating UK asylum legislation following EU Exit.

183. As part of this, this provision seeks to support the introduction of a differentiated asylum system by removing humanitarian protection (HP) from UK legislation via repeal of the Refugee and Persons in Need of International Protection Regulations 2006<sup>58</sup>. HP will be replaced by a new protection route in the Immigration Rules. The new route will align with temporary protection status and will come into effect in tandem with the differentiated asylum system.

### Costs and Benefits

#### Introduction of a 'two-limbed' test of asylum claims

##### Costs

##### *One-off Home Office resource costs*

184. Introduction of the 'two-limbed' test will generate one-off Home Office resource costs in the form of case worker familiarisation and training costs. Caseworkers will need to become familiar with the legislative change and the caseworker guidance issued. Additionally, caseworkers will be required to undergo training in order to understand how to appropriately apply the 'two-limbed' test to future intake volumes. There may also be a short-run productivity disbenefit associated with the introduction of the test.

##### *Recurring Home Office resource costs*

185. Rolling out 'two-limbed' test is likely to increase Home Office resource costs in three ways:

1. **Additional asylum decision-making analysis requirement** - all else being equal, this is likely to require additional case working FTEs, in order to avoid increasing the stock of asylum work in progress (WiP). This is due to likely lengthier initial interviews to ensure claimants have the appropriate opportunity to demonstrate the required standard of proof
2. **Increased appeal and Judicial Review of decisions** – where the higher standard of proof under the ‘two-limbed’ test is not met, particularly where failure leads to liability to removal (i.e. another form of leave is not granted), this is very likely to lead to additional appeals and Judicial Reviews of decisions relative to the baseline.
3. **Returns** – where a claimant does not meet the new ‘two-limbed’ test and they are liable for removal, the detention and return costs borne by IE are likely to increase against baseline.

### **Benefits**

186. Where the operationalising of the ‘two-limbed’ test results in additional and faster returns, benefits, in the form of avoided asylum support costs, will be generated by:

- **Reduced average asylum support costs per ‘two-limbed’ test failure** – if refusal decisions are reached sooner than under the Do Nothing, asylum support costs will be paid to failed asylum applicants over a shorter time period, and, therefore;
- **Reduced overall asylum support cost to the Exchequer** - if the operationalising of the ‘two-limbed’ test increases the number of returns, the number of claimants eligible for asylum support may reduce relative to the baseline.

### ***Consolidation of UK asylum legislation***

#### **Costs**

187. It is expected that there will be no Home Office one-off costs associated with the consolidation of existing legislation.

#### *Recurring Home Office resource costs*

188. The removal of HP, and its replacement with a new protection route, is expected to increase Home Office resource costs as a result of the requirement for more regular case reviews. Under the new route, case reviews would be required every 30 months, rather than every 60 months as is currently the case under the HP route.

### **Benefits**

189. Consolidation of UK asylum legislation will increase the coherence of the legislation and aid the understanding and consistent application of it by all actors in the UK asylum system.

### **Unintended consequences**

#### ***Introduction of a ‘two-limbed’ test of asylum claims***

190. The net impact of the introduction of the ‘two-limbed’ test would be changed by any unintended consequences of policy implementation, which could include:

- **Claimants with protected characteristics** - changing the evidential threshold may have disproportionate impacts on groups sharing protected characteristics, which will require regular review.
- **Increased absconsion risk** – where failure to meet the requirements of the ‘two-limbed’ test increases the risk of absconding, this may have fiscal disbenefits as a result of increased use of public services (including as a result of destitution), ‘grey’ economy labour supply and so on.

## **B2.6 Reducing the criminality threshold**

### **Background and Objective**

191. This provision aims to redefine a 'particularly serious crime' for the purposes of Article 33(2) of the Refugee Convention – which lifts the bar on non-refoulement of refugees – to a crime which is punished by a shorter prison sentence, bringing it in line with the provisions in the 2007 Borders Act.

192. It is current Home Office policy, in line with Article 33(2) of the 1951 Refugee Convention, to refuse or revoke protected leave for individuals who commit particularly serious crimes and are a danger to the community or a threat to national security: 'particularly serious crime' for these purposes is currently defined as criminality punished by a sentence of 24 months or more.

### **Current System**

193. Importantly, Foreign National Offenders Return Command (FNORC) caseworkers currently consider the refugee status of all FNOs sentenced to more than one year. However, the refugee status of those sentenced for between 12 and 24 months are rarely revoked as a result of the sentence received. Instead, it is more likely that revocation is taken for other reasons as permitted in policy, for example due to misrepresentation of material facts (paragraph 339AB of the Immigration Rules).

### **Costs**

#### ***One-off Home Office resource costs***

194. Reducing the criminality threshold for eligibility will require caseworkers, in particular those within FNORC, to become familiar with the legislative change and the updated caseworker guidance issued.

#### ***Recurring Home Office resource costs***

195. Reducing the criminality threshold for eligibility is likely to increase Home Office resource costs in several ways:

1. **FNORC** – a reduced criminality threshold is likely to generate additional FNORC resource costs. For example, as a result of the need to serve correspondence on additional offenders and to repeat the case work of those to whom Article 33(2) applies that cannot be returned due to EHCR barriers.
2. **Returns** – where a reduced criminality threshold results in the additional return actions, the detention and return costs borne by IE are likely to increase against the baseline.
3. **Increased appeal and Judicial Review of decisions** – a reduced criminality threshold leading to additional return actions may, in turn, lead to additional appeals and Judicial Reviews of decisions, relative to the baseline.

### **Benefits**

196. Where reducing the criminality threshold to 12 months from 24 months results in additional and faster returns, benefits, in the form of avoided asylum support costs, will be generated by:

- **Reduced average asylum support costs for those claimants convicted of crimes attracting a sentence of between 12 and 24 months** – asylum support costs will be paid to offenders, who have their asylum claim refused, over a shorter time period, and, therefore;

- **Reduced overall asylum support cost to the Exchequer** - as a result of additional cases refused refugee status<sup>52</sup>.

### **Unintended consequences**

197. The net impact of the reduced criminality threshold provision would be changed by any unintended consequences of policy implementation. Where revocation action is taken against claimants convicted of serious crimes, the risk of their absconsion increases. There are likely to be fiscal disbenefits associated with absconsion, in the form of increased use of public services (including as a result of destitution), 'black' economy labour supply and so on.

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<sup>52</sup> It should be noted that the vast majority of Article 33(2) cases involve individuals with refugee status, which Home Office considers for revocation. Refugees have access to the UK labour, and so do not require asylum support payments.

## B3: Immigration Offences and Enforcement

198. Sections B3.1- B3.9 provide analysis of the following measures within the Nationality and Borders Bill:

Section	Measure Name	Overview
B3.1	Increase sentence for entering in breach of deportation order	This measure increases the penalty for those returning to the UK in breach of a deportation order from 6 months to 5 years.
B3.2	Amend offence of illegal entry	This measure creates a new criminal offence of arriving in the UK without a valid entry clearance (or, in future, an ETA) where required, in addition to entering without leave. This will allow prosecutions of individuals who are intercepted in UK territorial seas and brought into the UK who arrive in but don't technically "enter" the UK. The measure increases the maximum penalty, which means it may be triable in the crown court, and therefore allows prosecutions to apply to those attempting to commit the offence.
B3.3	Amend offences of facilitation	This measure strengthens the facilitation offences in the 1971 Act by focussing on the behaviour of the facilitator, rather than the individual being brought illegally into the UK, and removing the need to prove that the facilitation of asylum seekers is for gain. The measure increases the maximum penalty for the facilitation offences from 14 years to life imprisonment.
B3.4	Clandestine civil penalty overhaul	This measure extends the scope of the civil penalties regime for clandestine entrants so that it also applies to all goods vehicles that have not been adequately secured, whether or not there is a clandestine present in the vehicle and to increase the penalty for non-compliance.
B3.5	Power to search containers	This measure provides an immigration officer with additional powers to search containers being used by irregular migrants for concealment in order to enter the UK illegally, where those containers are no longer on board a ship, aircraft, or any vehicle from which they may have been removed.
B3.6	New maritime powers aimed at intercepting and returning migrants at sea	This measure expands current maritime enforcement powers enabling maritime enforcement action to take place outside of UK waters in order to detect and/or prevent the illegal entry of migrants as well as the facilitation of illegal migrants. It includes powers to allow forcible disembarkation of non-compliant passengers
B3.7	Additional removal powers - removal timeframes	This measure provides a statutory minimum period to enable individuals to access justice prior to removal and makes provisions for removing individuals, following a failed departure, without the need for a further notice period.
B3.8	Additional removal powers - reform of early removal scheme	This is designed as a placeholder to allow the Secretary of State to amend the Early Removal Scheme in three ways. First, it extends the period during which a Foreign National Offender (FNO) can be removed early from their custodial sentence from 9 months to 12 months, so long as they have served half of the requisite custodial period before removal. Secondly, it allows removal from prison to take place at any point in the sentence on, or after, the eligibility date for the scheme. Thirdly, it introduces the 'stop the clock' provision, which will pause the FNO's sentence if successfully returned at the point of

		removal from prison under ERS. Thereafter, the removed FNO would be liable to serve the outstanding custodial period of their sentence if they returned to the UK at any point in the future.
B3.9	Bail considerations	This measure inserts a new criterion for consideration when determining whether to grant bail to an individual in immigration detention. It would require the decision maker to take into account whether a person has been non-compliant with the immigration or removals processes.
B3.10	Migrant Workers in UK Waters	This measure is designed as a placeholder to allow the Secretary of State to oblige foreign workers who require leave to enter the UK to obtain authorisation to work in the UK territorial seas.

### **B3.1 Increased sentence for entering in breach of deportation order.**

#### **Background**

199. This measure will increase the penalty for Foreign National Offenders (FNOs) returning to the UK in breach of a deportation order (current max is 6 months) to 5 years.

#### **Objectives**

200. This measure intends deter entry by FNOs that have been issued with a deportation order, by allowing longer maximum prison sentences.

#### **Current System**

201. The Immigration Act 1971, s24(1)(a) establishes the offence of entering in breach of a deportation order. The current maximum penalty is 6 months.

#### **Costs (exc. Familiarisation Costs)**

**Table 10: Prosecutions and Convictions of Non-citizen entering UK in breach of a deportation order, 2017-2019<sup>53</sup>**

Current Volumes Prosecuted			Current Volumes Convicted		
2017	2018	2019	2017	2018	2019
18	41	56	10	36	50

202. Table 10 above illustrates the number of non-citizens prosecuted and convicted of entering the UK in breach of a deportation order between 2017 and 2019. There has been an annual average of 39 prosecuted and 32 convicted of this offence. There is ongoing work to estimate the costs to the Criminal Justice System, Crown Prosecution Service, Crown Office and Procurator Fiscal (Scotland) and the Public Prosecution Service on Northern Ireland and Home Office IE Criminal & Financial Investigation.

203. The immediate ongoing costs will relate to individuals being in the UK prison system for longer periods of time due to the longer penalty of up to 5 years imprisonment. This is dependent on the returns agreements secured with source countries and the ease of removal.

<sup>53</sup> Source: Criminal justice system statistics quarterly: December 2019 - GOV.UK (www.gov.uk). 'All offence prosecutions and convictions by Home Office offence code.'

204. There may be cost savings to government in the longer term if the measure successfully deters illegal entry. Effective deterrence may lead to fewer irregular migrants encountered in the UK, including FNOs, avoiding the court costs of prosecution and conviction, and the costs of detention and removal.

205. In relation to detention costs, the detention estate is largely comprised of fixed cost contracts. Therefore, the measure would have to deter a significant number of individuals from irregular entry in order to have cost implications. I.e. the deterrent effect must be large enough to close a detention centre.

206. The above is highly dependent on future migration flows and as such volumes affected are uncertain, particularly as the deterrent effect relies on an unquantifiable behavioural response by migrants. In isolation, it is uncertain whether this measure will affect migrant behaviour. However, there may be more likelihood of an effect in conjunction with other measures aimed at deterring illegal entry.

### **Familiarisation Costs**

207. There are negligible familiarisation costs, as returning to the UK in breach of a deportation order is already an offence.

### **Benefits**

208. There is the potential for reduced economic harm related to irregular migration. In addition, this measure may help to disrupt or deter FNOs engaged in people smuggling and Modern Slavery, which are particularly harmful activities.

### **Uncertainties, Risks, and Assumptions**

209. It is unclear whether this measure will have any deterrent effect.

## B3.2 Amend offence of illegal entry

### Background

210. The 1971 Immigration Act, Section 24(1) (a) establishes the offence of knowingly entering the United Kingdom in breach of a deportation order or without leave. The maximum penalty is a Level 5 fine, 6 months imprisonment, or both.

211. This provision would allow increased penalties of up to 5 years imprisonment.

### Objectives

212. This measure intends to deter illegal entry by increasing the maximum sentence length.

### Current System

213. Currently, the maximum penalty is a Level 5 fine, 6 months imprisonment, or both.

### Costs (exc. Familiarisation Costs)

**Table 11: Prosecutions and Convictions of Non-citizen entering UK without leave, 2017-2019<sup>54</sup>**

Current Volumes Prosecuted			Current Volumes Convicted		
2017	2018	2019	2017	2018	2019
34	20	23	23	7	12

214. Table 11 above illustrates the number of non-citizens prosecuted and convicted of entering the UK without leave between 2017 and 2019. There has been an annual average of 26 prosecuted and 14 convicted of this offence. There is ongoing work to estimate the costs to the Criminal Justice System, Crown Prosecution Service, Crown Office and Procurator Fiscal (Scotland) and the Public Prosecution Service on Northern Ireland and Home Office IE Criminal & Financial Investigation.,

215. The immediate ongoing costs will relate to individuals being in the UK prison system for longer periods of time due to the longer penalty of up to 5 years imprisonment. This is dependent on the returns agreements secured with source countries and the ease of removal.

216. There may be cost savings to government in the longer term if the measure successfully deters illegal entry. Effective deterrence may lead to fewer irregular migrants encountered in the UK, including FNOs, avoiding the court costs of prosecution and conviction, and the costs of detention and removal.

217. In relation to detention costs, the detention estate is largely comprised of fixed cost contracts. Therefore, the measure would have to deter a significant number of individuals from irregular entry in order to have cost implications. I.e. the deterrent effect must be large enough to close a detention centre.

218. The above is highly dependent on future migration flows and as such volumes affected are uncertain, particularly as the deterrent effect relies on an unquantifiable behavioural response by migrants. In isolation, it is uncertain whether this measure will affect migrant behaviour.

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<sup>54</sup> Source: Criminal justice system statistics quarterly: December 2019 - GOV.UK (www.gov.uk). 'All offence prosecutions and convictions by Home Office offence code.'

However, there may be more likelihood of an effect in conjunction with other measures aimed at deterring illegal entry.

### **Familiarisation Costs**

219. As this replaces the existing offence of illegal entry, there may be some familiarisation costs for Immigration Enforcement officers, caseworkers, and legal practitioners. They will need to be updated through training and familiarisation of guidance to understand the offence.

### **Benefits**

220. There is the potential to reduce the economic harm caused by illegal entrants. However, there is not enough information available to quantify the benefits at this stage.

### **Potential Unintended Consequences**

221. This measure could deter irregular migrants seeking asylum from making an asylum claim.

222. The measure could create an incentive for people to get a referral into the National Referral Mechanism as a potential victim of modern slavery if this meant they could avoid criminal charges for illegal entry.

### **Uncertainties, Risks, and Assumptions**

223. It is unclear whether this measure will have any deterrent effect.

### B3.3 Amend offences of facilitation

#### Background

224. Strengthen the facilitation offences in the 1971 Act by focussing on the behaviour of the facilitator, rather than the individual being brought illegally into the UK, and removing the need to prove that the facilitation of asylum seekers is “for gain”.

#### Objectives

225. This provision removes the need to prove that the facilitation of asylum seekers is “for gain”. This is intended to deter individuals who facilitate irregular migration by lowering the evidential threshold for prosecution.

#### Current System

226. The Immigration Act 1971, Section 25a establishes the offence of Facilitating entry by asylum-seekers to the UK for gain, with a maximum penalty of 14 years.

#### Costs (exc. Familiarisation Costs)

**Table 12: Prosecutions and Convictions of facilitators of irregular migration, 2017-2019** <sup>55</sup>

Offence	Prosecuted			Convicted		
	2017	2018	2019	2017	2018	2019
Assisting entry to UK in breach of deportation order or exclusion order	3	1	1	1	1	0
Helping asylum-seeker to enter the UK	10	5	122	20	12	4

227. Table 12 above illustrates the number of individuals prosecuted and convicted of offences related to facilitation of irregular migration to the UK between 2017 and 2019. There is ongoing work to estimate the costs to the Criminal Justice System, Crown Prosecution Service, Crown Office and Procurator Fiscal (Scotland) and the Public Prosecution Service on Northern Ireland and Home Office IE Criminal & Financial Investigation.

228. Removing the need to prove that the facilitation of entry is “for gain” will expand the cohort that may be prosecuted and convicted for this offence. However, at this stage there is not enough information available to estimate the size of the facilitator cohort, or that prosecutions and convictions will increase beyond past trends. The potential combined deterrent effect of measures within the Nationality and Borders Bill adds additional uncertainty around future volumes.

#### Familiarisation Costs

229. Facilitation of illegal entry is already an offence, so there would be minimal familiarisation costs.

#### Benefits

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<sup>55</sup> Source: Criminal justice system statistics quarterly: December 2019 - GOV.UK (www.gov.uk). ‘All offence prosecutions and convictions by Home Office offence code.’

230. The benefits of this measure relate to the disruption of organised crime groups involved in people smuggling and modern slavery.

231. There may also be benefits related to the avoidance of economic harm associated with irregular migration.

**Potential Unintended Consequences**

232. As well as disrupting organised crime, these measures will also affect organisations or individuals who attempt to facilitate migration on a more ad hoc basis and who may not be aware of the potential penalties.

**Uncertainties, Risks, and Assumptions**

233. The potential combined deterrent effect of the Bill measures adds uncertainty around future volumes of prosecutions and convictions.

## B3.4 Clandestine Civil Penalty Overhaul

### Background

234. A substantial number of people entering the UK illegally arrive through concealment in vehicles travelling into the UK by freight transport routes.<sup>56</sup> This method of illegal entry continues and endangers the lives of those involved.
235. The current Clandestine Civil Penalty regime aims to reduce opportunistic entry of irregular migrants. The existing Clandestine Civil Penalty regime requires drivers and hauliers to adhere to vehicle security standards with the aim of reducing the ability of migrants to gain entry to unsecured freight vehicles. Opportunistic entry presents considerable risks, not only from concealment in or on vehicles, but also from attempting to gain access to vehicles in the middle of busy freight traffic.
236. However, it is not having the desired effect which is evidenced by the high proportion of drivers and hauliers that are not taking required steps to secure their vehicles. In 2020, there were a total of 1,869 cases where clandestine entrants were detected in vehicles with inadequate security, with around 80% of detections occurring within the Juxtaposed controls and less than 5% occurring inland. Over the last few years, this volume has remained between around 2,000 and 2,500 cases.<sup>57</sup>
237. Around 3.8 million Heavy Goods Vehicles (HGV) cross into the UK border each year which is made up of around 700,000 UK and non-UK registered HGVs.<sup>58</sup> Most UK hauliers are Small Medium Enterprises.<sup>59</sup>
238. A recent exercise at juxtaposed controls in Calais and Coquelles, found that over a third (41 per cent) of HGVs entering the UK do not have basic security measures in place.<sup>60 61</sup> This is much higher, around 55 per cent, for soft sided vehicles.

### Objectives

239. Changes to the Clandestine Civil Penalty regime aim to reduce opportunistic clandestine entry into the UK via vehicle freight, by means of improving driver and haulier adherence to standards of vehicle security. This is expected to be achieved through implementing the following changes:
240. Increasing the maximum penalty, currently up to £2,000, to £5,000 per migrant detected in their vehicle, for both driver and haulier. This is to provide an incentive for drivers and hauliers to comply with Clandestine Civil Penalty requirements and will be introduced through a secondary legislation change.
241. Extending the scope of the civil penalties regime for clandestine entrants so that it also applies to all goods vehicles that have not been adequately secured, whether or not there is a clandestine present in the vehicle

### Current System

242. Under the current Clandestine Entrant Civil Penalty Regime, a maximum penalty of up to £2,000 can be imposed for every person found on board vehicles that have not been adequately secured, up to a statutory maximum of £4,000, where both driver and haulier are penalised. However, the penalty level has not changed for nearly 20 years. Considering the

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56 Home Office Internal Information

57 Home Office Internal Information - 2014 to 2019

58 TASFIS data, March 2019 – February 2020

59 Road Haulage Association 2019 Annual Report

60 Home Office Internal Information

61 Defined as the presence of locks for hard sided vehicles and TIR cords/no rips for soft sided vehicles.

impact of inflation, for the penalty to have the same relative impact as it did when it was introduced, the penalty would need to be around £3,500 in 2021 prices. The current regime is also not having enough of an effect as a high proportion of drivers and hauliers are not taking the steps required to secure vehicles.

### **Costs (exc. Familiarisation Costs)**

#### **Costs to the private sector**

243. In line with guidance, analysis has sought to assess impact to the private sector based on location of economic activity being in the UK. Some non-UK hauliers may have a UK operation but there is no easily accessible dataset that can provide this breakdown. Therefore, due to the availability of data and the make-up of the haulage industry, analysis only considers UK haulage operators that are known to cross the UK border. This volume is assumed using the number of UK hauliers with an international operating licence.

244. There are around 8,800 UK hauliers that operate across the UK border, employing an estimated 72,000 HGV drivers. UK firms represent around 15 per cent of UK haulier border crossings.<sup>62</sup> It is not possible to determine how many UK HGV drivers are employed by foreign firms.

245. At this stage of policy development, analysis does not expect any additional burdens to be placed on HGV drivers and/or hauliers that are not already expected under current guidance (i.e. HGV drivers and/or hauliers are already required to secure their vehicles).

246. Initial costs – There may be some training costs, but this will depend on the final policy. For example, at this stage, it has not been determined whether drivers and hauliers will be required to use specific types of lock or other means to secure their vehicles. Therefore, it has not been possible to quantify these one-off impacts. As a working assumption, secure vehicles requirements have been assumed to be the same as the current system.

247. Ongoing costs – There are no additional ongoing costs that are expected to impact the private sector. Ongoing requirements are expected to be the same as under the current system

#### **Costs to the public sector**

248. If a new penalty is introduced for failure to secure a vehicle, regardless of whether an illegal migrant is found on board or not, Border Force may need to check vehicle compliance with Clandestine Civil Penalty rules. As a result, Border Force is expected to incur costs due to additional resource being required to check compliance and process penalties for non-compliance. It is worth noting that costs to the public sector estimates are uncertain at this stage but estimates under a range of scenarios are provided to give insight into the potential magnitude of costs. If a higher level of checks is pursued, associated public sector costs will be higher.

249. Due to uncertainty around how Clandestine Civil Penalty changes will be operationalised and the impact of changes on driver/haulier behaviour, analysis has considered the following scenarios:

- a. No change in driver/haulier Clandestine Civil Penalty compliance; and
- b. An increase in Clandestine Civil Penalty compliance which will result in some reduction in irregular migrant detections, though all are displaced into other irregular entry routes into the UK. (Compliance is assumed to increase to 70 per cent as actual compliance levels are difficult to determine).

250. In addition to the above scenarios and given operational uncertainties, this analysis explores the above scenarios under a range of different enforcement options with a range of costs. The options below are provided to indicate the potential magnitude of impact.
251. Targeted compliance checks conducted by Border Force: short operational exercises undertaken at semi regular intervals, with only a transitory impact on traffic flow and officer capacity to perform business as usual tasks. For this analysis it has been assumed a targeted check will be conducted in 1-2 hour exercises, covering between 25 and 100 per cent of HGV traffic flow.
252. Compliance checks by Border Force for a specified volume of traffic flow, with a continuous impact on traffic flow and officer capacity to perform business as usual tasks. For this analysis checks for between 1% and 10% of total traffic flow have been evaluated.
253. Analysis assumes a compliance check for one vehicle will take around 3.5 minutes to complete, consisting of a visual exterior inspection to assess compliance with secure vehicle requirements.<sup>63</sup> Between 30 per cent and 41 per cent of HGVs are assumed to not be secure depending on the scenario. For the purposes of this analysis, it is also assumed that there are no infrastructure limitations and no restrictions to staff working time (e.g. sick leave, travel time, annual leave). Therefore, figures should only be considered as rough estimates and not actual costs to operationalise compliance checks. This is proportionate at this stage of policy development. Further analysis will be conducted to support operationalisation as the policy is developed.
254. Initial costs – One-off costs are dependent on how the policy changes are operationalised. Therefore, it is not currently possible to determine these impacts.
255. Ongoing costs - Costs to the public sector (excluding familiarisation costs) are estimated to be around £0.9m to £43m PV over a 10-year appraisal period. These equate to costs to the public sector of around £0.1m to £5m per year. Cost estimates reflect costs of additional staff. The decision to recruit additional staff will fall to operational partners. If additional staff are not recruited to support this activity, then staff will be diverted from other business as usual activity, representing opportunity costs of foregone activity (not estimated here).
256. The policy changes do not intend to increase the volume of penalties given to HGV drivers. Rather the intention is to increase compliance with rules to decrease opportunistic irregular entry attempts. However, given current compliance levels with existing rules, it is expected that non-compliance will continue to occur. It is uncertain whether income will fall or increase from the policy changes. If an increase in the volume of penalties does occur, this would likely mean an increase in debt that needs to be chased because many penalties remain unpaid under the current system.<sup>64</sup> There may also be additional court costs when appeals are made by drivers/hauliers

## **Familiarisation Costs**

### **Costs to the private sector**

257. There will be a familiarisation costs for HGV drivers and hauliers transporting goods and services to the UK who will need to familiarise themselves with the updated guidance/requirements. Assuming new guidance will be of a similar length to the 2002 Clandestine Civil Penalty guidance (around 1,300 words), a reading time of 4 minutes, driver wages per minute as a proxy for the value of their time and covering the estimated population of UK HGV drivers operating across the border (72,000) this is estimated to be a one-off cost of around £60,000.

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<sup>63</sup> Minimum of 2 minutes and a maximum of 5 minutes per HGV vehicle.

<sup>64</sup> Home Office Internal Management Information

258. Familiarisation cost is calculated as: Volume of employees \* gross hourly wage \*time spent  
Outputs are illustrated in table 13 below:

**Table 13: Familiarisation Time**

Unit		(wpm)	(mins)		(mins)	(mins)	(mins)	(hours)
Scenario	Number of words	Speed	Time	Comp	Re-read time	Allowance	Total time	Total time
Central	1275	400	3.1875	0.8	0.6375	0.5	4	0.07

<i>Driver guidance familiarisation costs</i>	<b>UK only</b>
Length of guidance (words)	1275
Reading time (minutes)	4.00
Cost/ driver	£0.81
<b>Total cost</b>	<b>£58,790.15</b>

### Costs to the public sector

259. Border Force are expected to incur familiarisation costs due to the new guidance. It is not yet possible to determine the full cost of Border Force staff familiarising themselves with the new guidance because it is not clear who will be conducting checks – Border Force officers or contractors who conduct searches at juxtaposed ports. However, these costs are expected to be negligible.

### Benefits

260. It is difficult to determine the benefits of these policy changes due to the uncertainty around driver and haulier behavioural responses. However, if the measures are successful in achieving their intended aims, benefits will be present. These include:

261. An increase in driver and haulier compliance as they seek to avoid being penalised for not complying with Clandestine Civil Penalty rules.

262. Reducing opportunistic clandestine entry attempts by people seeking to enter the UK through this illegal route of entry.

263. Reduce the risk to life and danger that irregular migrants experience when attempting to enter the UK through this means.

264. Reduction in the number of irregular migrant detections by Border Force which may free up some staff to focus on other activities.

### Potential Unintended Consequences

265. These measures are intended to make it harder for individuals to gain entry to freight vehicles. In doing so they make it harder for people to reach the UK via clandestine means. Whilst it is hoped that these measures will reduce the overall volume of illegal entrants and deter individuals from entering the UK illegally, evidence suggests that migrants are likely to change their behaviour to avoid enforcement efforts. This may lead to the displacement of irregular migration attempts into other modes which may also carry cost and risk. Theoretically it can be assumed that opportunistic entry may have lowest monetary cost and that those using this method may not be able to access organised crime group methods. Therefore, displacement to other smaller ports may occur.

### Uncertainties, Risks, and Assumptions

266. Policy implementation is still under development which presents a risk as it is difficult to effectively capture all impacts at this stage. To mitigate this risk, analysis has considered two possible scenarios and a range of possible operational actions that could be taken.

267. There are substantial uncertainties present in how drivers and hauliers will respond to policy changes. It is plausible that there is no change in behaviour given the high level of non-compliance and the length of time the current regime has been instigated for.

## **B3.5 Power to Search Containers**

### **Background**

268. Irregular migrants and traffickers are taking greater risks when attempting to enter the UK illegally, including concealing themselves deeper into freight amongst goods being carried, opting for hard sided and refrigerated lorries and containers.

### **Objectives**

269. To provide additional powers of search to Border Force.

### **Current System**

270. Border Force have powers to search containers being taken off vessels by truck, the legislation will provide additional powers of search for containers stored at ports.

### **Costs (exc. Familiarisation Costs)**

#### **Public sector costs**

271. No additional costs are expected from this measure because these powers are already enacted by Border Force.

#### **Private sector costs**

272. There are not expected to be any notable costs to businesses from this measure because it does not represent a significant change from existing practices. However, some costs may be incurred depending on whether Border Force adjust the way they operationalise these measures. For instance, if port operators and businesses need to move containers to specified areas for Border Force to conduct searches.

#### **Familiarisation Costs**

273. Border Force officers may need to familiarise themselves with new legislation. As these powers are already used in practice, familiarisation costs are expected to be negligible. It is not proportionate to account for these costs.

### **Benefits**

274. Strengthening these powers will enhance Border Force capabilities to search for persons and reduce the threat to life of those using sealed containers to enter the UK illegally.

### **Uncertainties, Risks, and Assumptions**

275. Port Authorities are likely to be interested in this legislative change because they may need to move containers for Border Force to examine them. However, as this is already done by Border Force for immigration and custom purposes, is not expected to present a significant change from existing practices.

### **B3.6 New maritime powers aimed at intercepting vessels at sea and preventing irregular migrants from entering the UK illegally with amended powers to seize and dispose of any vessels.**

#### **Background**

276. In 2020, the number of irregular migrants crossing the Channel by small boat increased substantially<sup>65</sup> with around 15,600 people attempting crossings, resulting in around 8,500 arrivals to the UK. This represents a significant threat to the security of the UK border and risks the lives of people who attempt to reach the UK through this illegal route of entry.

277. Although some illegal migration via small boats is opportunistic, the majority is believed to be facilitated by organised criminal networks<sup>66</sup>. Therefore, it is counter to the Government's moral duty to let this method of entry go unchecked as it means people are put in the hands of ruthless criminals who endanger life and profit from human misery.

278. Additionally, the number of vessels Border Force is seizing has increased because of increasing small boat volumes. This has created further challenges in terms of storage space and storing seized vessels in a way which is safe and compliant with fire and safety regulations.

#### **Objectives**

279. To prevent and deter irregular migrants from using small boats to reach the UK through the provision of powers enabling Border Force to stop vessels for enforcement purposes and take those vessels and those onboard to a UK port and/or, with agreement from the receiving country, to a non-UK location, contributing to making the route unviable for irregular migrants and organised criminal networks alike.

280. To strengthen powers to seize vessels used to facilitate illegal entry to the UK and a more flexible approach for disposal of these vessels including by donation if appropriate. The proposed changes will allow seized vessels to be disposed of within a far quicker period than at present.

#### **Current System**

##### ***Intercepting vessels***

281. Currently, Border Force vessels are dealing with dangerous journeys in the channel.

282. The measures introduced through the Bill may be expected to impact on the incentive to use the small boats method in two ways. Firstly, the inadmissibility provisions are intended to reduce people's incentive to arrive in the UK via irregular means, as well as promoting alternative legal routes to protect the most vulnerable. Secondly, returns, particularly returns at sea, would directly reduce the viability of small boats a route of entry to the UK.

283. New primary legislation represents a significant change in this approach and is intended to support a more assertive operational maritime posture. This will commit BF to have wider powers to be able to safely redirect vessels outside of territorial seas and, subject to the appropriate agreements, return those on board to the country they embarked from.

284. Alongside this, Border Force will be provided with a power to forcibly disembark passengers if necessary, onto other vessels and/or onto land at foreign ports where applicable.

285. In future, compliant behaviour from irregular migrants may be less likely if the result of being met by Border Force would be being returned to where they have just travelled from or

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being conveyed to the UK into a less favourable asylum environment due to other Bill measures and/or and returned directly from there. In the event of less compliance from irregular migrants, the Home Office considers wider powers to enforce disembarkation as being necessary.

286. Due to uncertainty around the implementation of these measures, analysis considers two main scenarios. These are:

1. A differentiated asylum process including inadmissibility for those who enter the UK by irregular means but assuming there is no returns agreement in place with countries from where migrant embark from.
2. A differentiated asylum process including inadmissibility for those who enter the UK by irregular means and a returns agreement is in place with most irregular migrants being returned as a result.

287. At present there negotiations are taking places to establish returns agreements with relevant countries and thus considerable uncertainty exists around the impact on irregular migrant behaviour. As part of this impact assessment, scenario (b) above assumes returns could be made by land, air or directly at sea.

### ***Seizure and Disposal***

288. Border Force can already seize and dispose of vessels under current legislation. Changes will allow seized vessels to be disposed of by other means in addition to current arrangements.

### **Costs (exc. Familiarisation Costs)**

#### ***Intercepting vessels***

##### **Public sector costs**

289. Initial costs – Additional one-off costs may be incurred to enable these policy changes to be enacted. This may include investment in new capabilities to intercept small boats and manage any irregular migrants onboard as well as training costs to enable Border Force officers to manage people safely.

290. At this stage, required capabilities under each working scenario are still being identified. Therefore, it is not possible to determine the cost of these capabilities. However, it is expected that under the second scenario where a returns agreement is in place, investment in capability will be much higher, particularly if returns are made directly at sea. This is due to this being a substantial operational change and the safe interception and management of irregular migrants on small boats posing an increased challenge.

291. Ongoing costs – Ongoing costs will be dependent on how the policy changes are operationalised and whether there is a returns agreement in place. For instance, under the second scenario, Border Force vessels may have to travel greater distances if a returns agreement is in place and returns are made at sea, to a non-UK location. However, it can be expected that current running costs will not reduce because the Home Office will need to retain existing capabilities to ensure the ability to conduct search and rescue operations can continue.

292. Under both scenarios, one-off and ongoing costs will also be highly dependent on the behavioural response of irregular migrants. If non-compliance increases, Border Force may incur additional costs such as requiring more officers to safely manage people.

##### **Private sector costs**

293. There are not anticipated to be any private sector costs or costs to small and micro businesses because of these measure changes.

### ***Seizure and disposal***

### **Public sector costs**

294. Ongoing costs – Costs will be incurred from the disposal of vessels in storage. These costs may be marginally reduced due to these policy changes as they provide a wider range of disposal methods such as selling vessels or giving them to charities. However, this reduction in cost is expected to be negligible due to many small vessels being in an unfit condition for resale or reuse. Disposal costs do not represent additional costs as they are simply brought forward if the required 12-month storage period is reduced.

### **Private sector costs**

295. There are not expected to be any private sector costs.

296. There are not expected to be any costs for small and micro businesses.

### **Familiarisation Costs**

297. There are expected to be some familiarisation costs for staff supporting search and rescue operations in the channel and for staff to become familiar with new vessel seizure and disposal policy.

### **Benefits**

#### ***Intercepting vessels***

298. The purpose of the maritime interception measures is to protect life and deter people from attempting to enter the UK illegally by small boat and disrupt organised criminal networks business models. The extent to which these objectives are achieved will differ under each scenario and will be determined by the behavioural responses of migrants and organised criminal networks to these changes. It is expected that there will be a greater change in the behaviour of irregular migrants and those facilitating small boat crossings under the second scenario, with an increased likelihood of return. If successful, policy changes will represent a benefit and reduce risk to life from people attempting to reach the UK by small boat.

299. If irregular migrants are deterred from using small boats as an entry route to the UK, there may be less pressure on Border Force maritime operations and potentially less pressure on the asylum system if these measures lead to a deterrent effect.

300. If this route of entry is made unviable, there is also expected to be benefits present in disrupting organised criminal networks business models which may affect their ability to profit from crime. This benefit is further enhanced because the same criminal networks responsible for people smuggling are also responsible for other illicit activity ranging from drug and firearms trading to serious violent crimes as set out in the policy statement. Therefore, disrupting profitability from small boats may reduce their ability to conduct other illicit activity.

301. The impact from these policy changes on illegal migration via small boat is uncertain. This is largely due to the inherent uncertainty in any behaviour response.

#### ***Seizure and disposal***

302. Border Force own storage facilities therefore marginal storage costs at that location are negligible. However, there are benefits that are expected to result from policy changes.

303. Firstly, a more flexible approach for vessel disposal will allow charities and other private sector organisations to benefit from the opportunity to reuse small boat vessels that are in a good condition. This may also present positive environmental impacts as vessels that would have previously disposed of, with many going to landfill, can now be reused.

304. Secondly, policy changes should mitigate health and safety risks while vessels are in storage including issues around fire safety.

## **Potential Unintended Consequences**

### ***Intercepting vessels***

305. There are several potential unintended consequences that may result from policy changes. The policy changes are intended to change the behaviour of migrants and organised criminal networks in order to discourage the use of small boats. However, irregular migrants and organised criminal networks may change their behaviour in other ways to avoid enforcement. This could include non-compliance when being intercepted at sea which would make it difficult for Border Force to manage individuals, as well as small boats actively avoiding Border Force interception.

### ***Seizure and disposal***

306. Reducing the storage period before disposal could result in some owners making a claim on a vessel which has already been disposed of. However, the number of instances and cost of any compensation is expected to be minimal. To mitigate this, Border Force take steps to ensure the vessel has not been reported missing before any action is taken.

## **Uncertainties, Risks, and Assumptions**

### ***Intercepting vessels***

307. The policy changes aim to deter illegal migration by small boat and disrupt organised criminal networks.

308. It is expected that inadmissibility and a returns agreement would have a larger impact on irregular migrant and facilitator behaviour because it would contribute to making small boats an unviable route of entry to the UK. If a returns agreement is not in place, it may not lead to much of a behavioural response as irregular migrants are still able to reach the UK.

### ***Seizure and disposal***

309. Disposal through selling or donating vessels presents a risk of vessels being reused for the facilitation of irregular migrants across the channel. This risk is expected to be low if sufficient actions are taken to mitigate risk such as checks of receiving organisations. Evidence suggests that only a small number of vessels have been sourced from the UK and transported to Europe to be used in irregular migrant crossings<sup>67</sup>.

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## **B3.7 & B3.8 Additional removal powers**

### **Background**

310. This measure includes changes to current policy to make the removal process more efficient and less vulnerable to legal challenge in the future. This measure includes:
311. Standardising the notice period length so it is consistent across the board (to 5 working days)
312. Extending the time period where an additional notice period is not necessary following a failed removal (from 10 to 21 days)
313. When a removal fails following an unsuccessful appeal or JR decision and the removal can be rearranged within 21 days, then it is not necessary to give a further notice period.
314. There have been a number of legal challenges over the years around the application of notice periods (the time where a person cannot be returned whilst they are allowed to access justice) and removal windows (a length of time after the notice period in which an individual could be returned without further notice of their removal). This resulted in the suspension of the removal window policy. Ministers are clear that they wish to place policy instructions in relation to notice periods and returns on a statutory basis to make the position clear and seek to avoid litigation if possible.

### **Objectives**

315. The measure aims to create a more simplified and streamlined process. This is through amending the current system on Notice periods such that there is a minimum notice period of 5 working days in all cases. This will simplify the process as there will be less disparity between cases and their corresponding notice period.
316. The measure also aims to ensure individuals have a reasonable opportunity to access justice thus reducing failed returns.

### **Current System**

317. The measure looks to amend two parts of the current returns system, this includes:

#### ***Notice Period***

318. The current position with respect to notice periods is articulated in version 20 of the Judicial Reviews and Injunction general instructions ('JRI').
319. Subject to certain exceptions, the following notice periods must be given:
- normal enforcement cases – minimum 72 hours (including at least 2 working days)
  - if not detained - 7 calendar days (only used with removal windows which are not currently in operation)
  - third country cases and cases where the decision certified the claim - minimum 5 working days
320. In normal enforcement cases i.e. administrative removal and deportation cases, unless an exception applies, there are 3 rules to consider when calculating the minimum notice period:
- a minimum of 72 hours must be given
  - this 72-hour notification period must always include at least 2 working days
  - the last 24 hours must include a working day unless the notice period already includes 3 working days
321. The JRI sets out in detail exactly how to do the above calculation. The cumulative result of the above policy is that it is complicated. There is therefore a case for simplifying the process

and making it consistent across the board. This is likely to result in more clarity for Home Office staff, legal representatives, and migrants.

## **Extension**

322. The current system states that each case for extending the notice period must be considered on its individual merits. Ultimately, the key consideration is whether the person has had a reasonable opportunity to access legal advice and recourse to the courts.
323. At present the following are potential reasons why extending a notice period might be justified:
- a. *Change in legal representation* – there may be circumstances in which an individual has justifiably lost contact with their representatives, for instance, the legal representative has ceased operating. Where this is raised by an individual, the caseworker is required to ask for reasons and the reasons must be assessed.
  - b. *Access to legal advice (detained cases)* - individuals detained in immigration removal centres have access to legal advice ‘surgeries’. An example of when it may be appropriate to extend under this category is where say an unrepresented person (in detention) wishes to obtain legal advice and cannot be given an appointment at the legal advice surgery within the initial 72-hour notice period. There are a number of factors which would need to be taken into account when assessing the merits of such a request.
  - c. *Access to relevant documentation* – A request for an extension under this category again needs to be considered carefully having regard to numerous factors i.e. exploring the reasons why the individual claims to not have access to the relevant documentation.
324. The JRI sets out the existing policy on when a second period of notification is not required. Essentially where a return fails for certain reasons it may not be necessary to give another notice period, provided the return is rearranged within 10 days of the failed removal.
325. There are exceptions to this rule. It is on the provision that the destination of return remains the same. If the destination changes then a new notice period would be required for the individual to access justice. If the route is altered in such a way that the individual will transit a different country, which is not considered a ‘safe country’, then a second period of notification is required.

## **Costs (exc. Familiarisation Costs)**

326. We have been unable to monetise the cost of this measure, however, based on operational expertise we assume there will be minimal additional costs.
327. The potential cohort this measure could impact is the failed enforced returns from detention population. Internal analysis suggests that the potential impacted population is 3% of this cohort (c.200 annually).
328. There is currently a high-level of uncertainty for the impact this measure will have on the length of stay in detention. If this measure works as intended; reducing cancellations and deferrals on enforced returns, then there should be a reduction in the length of stay for detainees in detention. This is not expected to lead to any additional costs.
329. However, if this measure does not impact cancellations and deferrals as intended, then longer notice periods could potentially result in an increase in the length of stay in detention. This is expected to have minimal impact on detention costs as these mostly consist of fixed costs.

## **Familiarisation Costs**

330. There are not expected to be any additional staffing costs.
331. There will be additional training costs as the current training materials will need to be updated to reflect the new changes and staff will need to be trained accordingly.

## **Benefits**

332. As noted above, it has not been possible to monetise the additional impact of this measure.

333. However, if this measure works as intended, it will lead to a reduction in cancellations and deferrals. This should result in detainees being returned quicker and spending less time in detention. This should free up capacity thus facilitating improved flexibility in the detention estate. As set out in the cost section, the volumes affected from this measure could be around 200 individuals annually.

### ***Cancelled Returns Saving***

334. The impact of this measure could result in a cost saving due to fewer cancelled returns. Three components make up the marginal cost of a cancelled enforced return on a scheduled flight. First, is the average cost of cancelled subject tickets (for the returned individual) that cannot be refunded. Second, is the same but for cancelled escort tickets (for the average accompanying escorts). Third, is the cancellation fee from the escort suppliers (zero if below collar rate but some fees for AirMed). The central estimate of the average cost saving for preventing a cancelled removal is £270 with a range between £200-£310.

335. Using the potential impacted population (c.200), as set out in the costs section, this measure could lead to a potential cost saving of up to c.£54,000 per annum.

336. We also anticipate a similar impact on cancelled tickets for the cohort affected by the extension of the second notice period from 10 to 21 days. However, at this stage we have been unable to quantify this impact.

### ***Family Returns***

337. Currently, if the return of a family fails, they will often be returned to their accommodation and released as they can generally only be kept in pre-departure for 72 hours (unless extended to 7 days with ministerial approval). Extending the second notice period window from 10-days to 21-days should increase the probability of a successful second attempt because there will be no need to serve paperwork again for a second notice; alerting families and increasing the potential for absconding. Furthermore, a 21-day window provides more time to locate and return a family, if the first attempt was unsuccessful due to the family not being home or having absconded. The volume of individuals who may be affected by this has not yet been quantified.

## **Potential Unintended Consequences**

338. At this stage we do not foresee any unintended consequences from this measure.

## **B3.9 Bail Considerations**

### **Background**

339. This measure is looking to amend the list of factors set out in paragraph 3(2) of Schedule 10 to the Immigration Act 2016 which must be taken into consideration by the decision maker (judges) in whether to grant immigration bail or the conditions to attach to that bail to include whether a person is not compliant with the asylum or returns system without reasonable excuse.

### **Objectives**

340. To address 's concerns that the current bail process is open to exploitation from detained persons who are non-compliant with the asylum or returns system by amending the list of factors which must be taken into consideration in whether to grant immigration bail or the conditions to attach to that bail. If an individual is granted bail, they will be released from detention.

### **Current System**

341. Where there is evidence of non-compliance with the asylum or returns process, the current criteria under paragraph 3(2) of Schedule 10 does not explicitly reference non-compliance with these processes, and as such the judiciary do not need to have any regard to this when considering whether to grant bail or what conditions to apply to a grant of bail, even when assessed as a deliberate tactic to be released from detention. The barrier becomes much harder to remove once they are in the community, not only due to higher volumes of applications and longer average timescales in conclusions, but notably can be due to other factors within the persons control such as absconding, or continued non-compliance.

342. An example of the concerns raised by IE is where a person raises a barrier to removal whilst in detention. The person in question refuses to be interviewed in respect of that barrier, and bail is granted on the strength of that new barrier, usually an asylum claim. An asylum claim in most cases will require substantive consideration, which within detention can take several weeks and lead to an in country right of appeal. This therefore holds weight in favour of the presumption of liberty when considering the Hardial Singh principles and can operate as an incentive for abusive claims to enable release.

### **Costs (exc. Familiarisation Costs)**

343. Based on expert judgment from operational colleagues, we assume there will be no additional costs (e.g. returns costs) due to this policy amendment this is because the Immigration Act 2016 already include a 'catch all' requirement to consider anything that the decision maker considers relevant. The policy amendment is making explicit a factor which may already be considered, where applicable, in making decisions on whether to grant immigration bail.

344. The policy's objective is to reduce the number of detainees from exploiting the bail process. If some decision makers don't currently consider non-compliance in their decision making, the policy amendment could lead to more individuals being refused bail, therefore remaining, or being placed in the detention estate, and ultimately being returned. This would result in an increase in returns costs. However, we are unable to quantify the impact of the policy amendment.

### **Familiarisation Costs**

345. No expected familiarisation costs

### **Benefits**

346. As noted above, there is no evidence on the additional impact of this measure.

347. Furthermore, there would be an added benefit from the amendment on the decision makers. As the guidance has been tightened, the decision process will become more coordinated with less factors being open to interpretation.

**Potential Unintended Consequences**

348. There are no expected unintended consequences from the measure.

## **B3.10 Migrant Workers in UK Waters**

### **Background**

349. The clause is a placeholder designed to confirm that permission is required to work in the territorial seas in the same way as it is required to work on the UK landmass, and that consequently working without leave is subject to the illegal working regime.

### **Objectives**

350. Subsequently one of the aims of this measure is to bring it within the scope of the illegal working offences.

### **Current System**

351. The existing government policy position is that permission to work is required for the UK's territorial seas.

### **Costs (ex. Familiarisation Costs)**

352. Given that this measure aims only to clarify existing policy, we do not expect any significant costs

### **Familiarisation Costs**

353. This measure has no expected familiarisation costs.

### **Benefits**

354. Clarifying policy may increase compliance but no significant monetised benefits are anticipated.

### **Potential Unintended Consequences**

355. There are no expected unintended consequences from this measure.

## B4: Modern Slavery

356. Sections B4.1-B4.3 provide analysis of the following measures within the Nationality and Borders Bill:

Section	Measure	Overview
B4.1 B4.1.1	Modern Slavery (Reasonable Grounds)  Conclusive Grounds	This measure clarifies the thresholds applied in determining whether a person should be considered a potential or confirmed victim of modern slavery or human trafficking. It confirms in legislation the thresholds for both the reasonable grounds and conclusive grounds decisions.
B4.2	Modern Slavery (Recovery and Reflection Exemptions)	This measure implements the UK's ECAT obligations to provide a recovery period to potential victims of modern slavery, during which the victim must not be removed from the UK. It also sets out exemptions to the recovery period and introduces a presumption against multiple recovery and reflection (R&R) periods where an individual has already benefitted from an R&R period and the further reported exploitation happened prior to the previous referral into the National Referral Mechanism (NRM) unless in exceptional circumstances.
B4.3	Modern Slavery (Temporary Leave)	This measure sets out the circumstances in which the Secretary of State must grant temporary, limited leave to remain to confirmed victims of modern slavery.

## **B4.1 Modern Slavery: Reasonable Grounds**

357. The Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) states that support should be provided where a signatory finds “*reasonable grounds to believe*” that an individual has been a victim of trafficking. However, the threshold for a Reasonable Grounds (RG) decision in the UK, as set out in the Modern Slavery Act 2015, is that we have “*reasonable grounds to believe that a person may be a victim*” and in the Statutory Guidance published under Section 49 of the Modern Slavery Act 2015 is “*I suspect but cannot prove that the person is a victim of modern slavery*”.
358. Through this legislation, we are amending the Modern Slavery Act 2015 definition to “*reasonable grounds to believe that a person is a victim*”. Separately we will also engage with stakeholders on amending the Statutory Guidance definition to make clear that the test applied in practice will be “*reasonable grounds to believe, based on objective factors but falling short of conclusive proof, that a person is a victim of modern slavery*” – this latter proposal is not the focus of this impact assessment.

### **Background**

359. Published data indicates that in 2020 there were 10,608 Reasonable Grounds decisions and 3,454 Conclusive Grounds (CG) decisions made by the SCA. 92% of RG decisions and 89% of CG decisions were positive. Following a positive RG decision, a potential victim will receive a Recovery and Reflection (R&R) period. For adult victims this can include, for example, accommodation, financial support, and access to a support worker. The RG decision also provides individuals with uncertain immigration status a period of protection from removal.

### **Objectives**

360. The objective of this policy is to align the RG threshold in the Modern Slavery Act with ECAT, which is clear that support should be provided “*when there are such reasonable grounds to believe that the person concerned is a victim*”). This will bring England & Wales in closer alignment with the devolved administrations’ definitions, both of which provide support where a potential victim ‘is’ rather than ‘may be’ a victim. This will provide legislative clarity and consistency across the UK.
361. Reasonable grounds would usually include reference to objective factors beyond the account itself. The definition of objective factors and what constitutes an ‘objective factor’ is subject to a separate longer-term consultation process.

### **Current System**

362. For adult victims, the RG threshold acts as the gateway to support with individuals who receive a positive RG decision being eligible for support. Currently, the Modern Slavery Act 2015 uses the phrase: “*reasonable grounds to believe a person may be a victim of trafficking*” in addressing the Reasonable Grounds Threshold. It is this wording (“*may be*”) that is the subject of this change.

### **Costs (exc. Familiarisation Costs)**

363. The costs impact at this stage are likely to be minimal. There may be costs implications after guidance changes, which are being consulted on. The impacts of this will be considered separately.

### **Familiarisation Costs**

364. There are likely to be familiarisation costs for both decision makers in the SCA. Decision makers would need to familiarise themselves with the new test and how to correctly apply this to decisions. There are 2.5 pages of guidance that will be changed following the new legislation

that decision makers and first responders would have to familiarise themselves with. This would take approximately 10<sup>68</sup> minutes of reading time.

365. In 2020, there were approximately 90 decision makers in the SCA, therefore there would be a time cost of £240 for all decision makers to read the guidance.<sup>69</sup> The SCA are recruiting around 250 decision makers in 2021 therefore there will be additional costs of £650 resulting in familiarisations costs of £900 in total.

### **Benefits**

366. The impact at this stage is likely to be minimal. Benefits may arise following the proposed guidance changes in the New Plan for Immigration, which are currently being considered and are subject to further engagement. The impacts of this will be considered separately.

### **Uncertainties, Risks, and Assumptions**

367. The victims and first responders are assumed to provide the same level of detail in the referrals as at present. The SCA are therefore assumed to spend the same amount of time on average considering each referral.

368. The change to the legislation alone is likely to have minimal impact except to align the policy with devolved administration definitions. The changes to the statutory guidance will be assessed separately.

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<sup>68</sup> This is calculated using internal analysis which estimates the time taken to read a set number of words at varying reading speeds.

<sup>69</sup> This is calculated using the average salary at EO grade

#### **B4.1.1 Conclusive Grounds (CG) Threshold**

369. The measure will put the Conclusive Grounds threshold, which is currently only stated in guidance, into primary legislation.

#### **Background**

370. The Conclusive Grounds (CG) decision marks the end of the identification process. This test is a retrospective finding of fact as to whether, on the balance of probabilities, the individual is in fact a victim of modern slavery. The Court of Appeal recently confirmed that the balance of probabilities was the only appropriate threshold to use. As such, it is intended that the current guidance for the CG test for referrals into the NRM will be put into primary legislation.

#### **Objectives**

371. The objectives of putting the CG threshold into legislation is to confirm in legislation that this should be decided on the balance of probabilities. This is the current test as accepted by the Courts and will make decision making more transparent.

#### **Current System**

372. Currently the CG threshold is only stated in guidance.

#### **Costs (exc. Familiarisation Costs)**

373. There would be no costs incurred from putting the CG threshold into legislation as the test is already in guidance.

#### **Familiarisation Costs**

374. There would be no familiarisation costs of putting the CG threshold into legislation as it is already stated in guidance.

#### **Benefits**

375. Putting the CG threshold into legislation would provide greater legal clarity and for potential victims there would be greater certainty as to the legal test. There is insufficiently clear data on the number of JRs following a negative CG decision and therefore the total impact of this measure is unknown.

#### **Potential Unintended Consequences**

376. There are no expected unintended consequences of this measure.

#### **Uncertainties, Risks, and Assumptions**

377. As the test is already in guidance, it is expected that the legislative change is unlikely to have any significant impacts.

## B4.2 Recovery and Reflection Exemption

### Background

378. The legislation will establish an entitlement to the recovery and reflection (R&R) period that potential victims of modern slavery receive through the National Referral Mechanism (NRM). Upon receipt of a positive Reasonable Grounds (RG) decision, identifying them as a potential victim of modern slavery, they will be entitled to a R&R period during which they will have access to support and be protected from removal from the UK (where relevant) for at least 30 days (set at 45 days in guidance) and up to the point a Conclusive Grounds (CG) decision is made, unless exemptions apply. The R&R period is already provided for in existing guidance. The exemptions and qualifications to a R&R period will be:

- a. On grounds of public order;
- b. Multiple recovery periods;
- c. An improper claim.

379. The legislation will introduce a definition of “public order grounds” to clarify the first exemption, which will focus on serious criminality and threats to national security. The legislation will also provide for a presumption against multiple recovery periods; if an individual who has already received a R&R period is subsequently referred to the NRM again for exploitation that happened before the previous R&R period was granted, they should not generally receive a further R&R period, although there are exemptions within this measure. The legislation will also enable an exemption to the R&R period if the victim is found to have improperly claimed to be a victim of modern slavery.

380. The legislation will allow the Secretary of State (SoS) to withhold support and protection from removal for a potential victim and will apply to both foreign and UK nationals. The Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) sets out our obligations to identify and support victims of modern slavery. Article 13 provides for a R&R period to be given to potential victims of modern slavery for a minimum of 30 days, during which they are protected from removal and may be entitled to support. In England and Wales, this support is provided through the Modern Slavery Victim Care Contract (MSVCC). The policy in England and Wales is to provide a minimum of 45 days of R&R.

381. The protection from removal is a clear feature of ECAT and fundamental to ensuring that potential victims of modern slavery can reflect and begin to recover without the pressures associated with imminent removal from the country. However, ECAT (Article 13(3)), deliberately provides for exceptions to the R&R period in cases of improper claims and on grounds of public order. The details of the public order definition are not, however, defined. This measure seeks to define public order to ensure it can be implemented in line with the intentions of ECAT.

### Objectives

382. The policy objective of this measure is to enable the Secretary of State to withhold NRM support and the protections it affords on public order grounds, where previous recovery periods have been received or where protection has been improperly claimed. The improper claims exemption will be defined in guidance so are not covered by this IA. The Home Office will establish a legislative entitlement to the R&R period that potential victims of modern slavery receive through the NRM. Upon receipt of a positive RG decision, identifying them as a potential victim of modern slavery, they will be entitled to a R&R period during which they will have access to support and be protected from removal from the UK (where relevant) for at least 30 days (set at 45 days in guidance) and up to the point a CG decision is made, unless the exemptions mentioned above apply.

### Current System

383. The current system does not provide guidance to decision makers on when they can withhold the R&R period following a positive RG decision. However, Art 13(3) of ECAT contains an exemption, pursuant to which the Parties to ECAT, “*are not bound to observe [the R&R period] if grounds of public order prevent it or if it is found that victim status is being claimed improperly*”. ECAT does not define “public order” which limits decision makers’ current ability to withhold the R&R period (and the protections it offers) on public order grounds.

384. The current policy guidance implicitly allows individuals to benefit from multiple R&R periods following a positive RG decision. Given that victims of modern slavery may have had periods of high vulnerability and multiple, complex needs, some individuals experience multiple forms of exploitation at different points in time. The guidance therefore rightly allows for protection and support for individuals subject to repeated exploitation. However, in cases where the exploitation occurred prior to the previous R&R period, further recovery periods are unlikely to be justified, although exemptions are provided for in the legislation.

### **Costs (exc. Familiarisation Costs)**

385. There would likely be a cost associated with implementing the new legislation. This is likely to result in costs to the (i) the Single Competent Authority (SCA); (ii) potential victims, and (iii) other costs to the Home Office.

386. The exact number of victims the public order exemption will cover is uncertain. However, a definition of public order that covers serious criminality is likely to cover some potential victims of modern slavery that are Foreign National Offenders (FNOs) and British Nationals that have committed a criminal offence. In the five months to May 2021 there were on average 84FNO referrals into the NRM per month, extrapolating this to 12 months we estimate 1,008 FNOs would be referred into the NRM per annum.<sup>70</sup> From published data an estimated 73% of FNOs received a positive RG decision in 2019, therefore, using this same assumption for 2021 volumes results in an estimate 737 FNOs that could be covered by the exemption. In 2020, 324 adults British nationals were referred into the NRM where the potential victim was being prosecuted or charged with a criminal offence at the time of their referral.<sup>71</sup> We have used this number of British nationals as a proxy to estimate the number of potential victims who may come under the public order exemption. The referral data only contains a flag where there is current CPS interest, however it is possible an individual may have past convictions which aren’t picked up at the time of referral. We assume 292 (90%) of British Adults received a positive RG.

387. We cannot definitively say all these individuals, FNOs and British nationals, would be subject to the exemption. This is because it will not be automatically applied, and decision-makers will use discretion on when to apply the exemption on a case-by-case basis. Children could also be subject to the exemption; however, it is likely there would be safeguarding reasons that would lead to these individuals receiving the R&R period. We have therefore excluded them from our analysis.

388. The number of potential victims in receipt of multiple recovery periods is currently not recorded in a way that enables analysis, therefore the potential costs and benefits to the victim and the SCA have not been estimated for this exemption.

### **Costs to the SCA**

389. It may take more time for decision-makers to process an RG decision if they also need to consider whether any of the exemptions to the R&R period apply. It currently takes approximately 0.5 days of an Executive Officer’s (EO) time to write the report for a positive RG

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<sup>70</sup> Home Office internal data

<sup>71</sup> This is internal data and does not include previous convictions of a potential victims, only criminal proceedings at the time of their NRM referral

decision. In addition, for relevant cases, the decision-maker would then need to request/access additional information to assess whether any of the exemptions apply and potentially write a report (further to the RG report) to justify the application (or not) of the exemption. The operational implementation will be designed with the SCA and will require underpinning guidance which will reflect the considerations needed when considering using the public order exemption. This is currently being developed therefore it is not yet possible to estimate the full impact. Should the SCA recruit more decision makers to bring additional capacity for these decisions, this would result in additional costs to the SCA. Equally, this could be managed through current staffing levels but may require additional time for cases which need a public order consideration and increased pressure on senior staff to oversee those decisions.

390. There will be a need to record the exemption decision as a minimum, which will be an additional task for the SCA, although it may not add to costs. The operational impact of this will be linked to wider work on understanding the impact across all the modern slavery measures within the legislation on the SCA and the steps needed to operationalise them. Any costs to the SCA are likely to be outweighed by the benefits from not making CG decisions on cases where the exemptions apply. This is because CG decisions are much more resource intensive than RGs (see benefits section).

#### ***Costs to the Victim***

391. As outlined above, depending on the operationalisation of this measure by the SCA, there may be an impact on the length of time potential victims will be waiting for RG decisions. As above, the processes are currently being developed, therefore it is not yet possible to estimate the full impact. Without additional staffing resource, potential victims could be waiting longer due to the additional time required for decision makers to consider the exemptions. There may also be a cost to victims who are subject to the exemptions and no longer receive the R&R period, the accompanying MSVCC support and the protections from removal that a positive RG decision offers.

392. If the R&R period (and the accompanying MSVCC support) is withdrawn under the exemption, then there could be an impact on a victim's ability to recover from their exploitation. However, we cannot estimate the cost to the victim as we do not know the impact support from the MSVCC has on recovery from their victimisation

#### ***Other Costs to the Home Office***

393. There may be costs associated with any legal challenges that may arise if individuals challenge the decision to withhold the R&R period. There may also be claims for damages or compensation from potential victims who do not receive an R&R period. However, it has not been possible to estimate the expected number of challenges.

394. There might also be additional costs to the Home Office from returning from the UK additional individuals who are no longer afforded the protection from return under the R&R period. The number of potential returns resulting from the exemptions are uncertain. However, the potential impact of the public order grounds exemption can be estimated. We know 182 FNOs were referred into the NRM in 2019 from immigration detention. Of these, 116 raised other applications or legal challenges and 66 (35%) only raised an NRM referral, 3 of whom were returned anyway after receiving a negative RG decision or a final CG decision.<sup>72</sup> If we apply this same percentage to the 2021 volume estimates, 349 potential victims could be affected by this measure. We cannot assume the public order grounds will apply in every case and for those where it does there could be other barriers to return. If we assume two-thirds are returned there would be 233 additional FNO returns per year from defining public order grounds in legislation.<sup>73</sup>

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<sup>72</sup> Home Office internal data

<sup>73</sup> The estimated number of FNO returns uses 2021 data as opposed to 2019 data to reflect the most recent trends. As a result, return numbers are higher than in sections of this document that are based on 2019 figures.

395. The estimated marginal cost of an average enforced return of an individual is estimated to be £4,400, with a sensitivity range of £2,500-£7,000. This is because costs can vary between cases and operational changes. This incorporates additional escorting, ticketing, and any additional integration support. This doesn't include any additional costs relating to wider processing or detention costs, we assume most of that is fixed. Therefore, there could be a total additional cost of removal of £0.7M on average per annum.

**Table 14: Estimated annual additional cost (£m) of removal, 2021-2031**

Year	Total Discounted Cost (£m)
2021/22	£0
2022/23	£1.0
2023/24	£0.9
2024/25	£0.9
2025/26	£0.9
2026/27	£0.8
2027/28	£0.8
2028/29	£0.8
2029/30	£0.7
2030/31	£0.7
Annual average	£0.7
<b>Total Costs</b>	<b>£7.5<sup>74</sup></b>

### Familiarisation Costs

396. There are likely to be familiarisation costs for current decision makers having to read and learn the new legislation and exemptions. The guidance hasn't been finalised yet, but it is expected this will be around 3 to 5 pages long for the exemptions, which would take around 20 to 35 minutes for a decision maker to read, at a cost of £6 per decision maker.<sup>75</sup> There are currently 92 decision makers in the SCA so for the Public Order legislation there would be a familiarisation cost of approximately £600. The SCA are recruiting around 250 decision makers in 2021 therefore there will be additional costs of £1,500 resulting in familiarisations costs of approximately £2,100 in total.

### Benefits

397. We expect the following benefits to arise from the Public Order exemption: (i) reduction in costs to the Modern Slavery Victim Care Contract; (ii) reduction in SCA decision-making resource on CGs and (iii) a reduction in costs to Immigration Enforcement, (iv) Crime Averted.

### SCA (Modern Slavery Victim Care Contract)

398. There is likely to be a reduction in cost to the MSVCC as those who are subject to the exemptions would no longer be entitled to the support that a potential victim can access following a positive RG decision. Support can include accommodation, financial support, a support worker, and other support listed in the Modern Slavery Act 2015 Statutory Guidance. The amount of financial support an individual receives is dependent on their circumstances but currently ranges from £35 per week to £65 as stated in the Statutory Guidance. Additional payments can also be made for any dependents. A potential victim is currently entitled to this support in line with their recovery needs, which is currently until their CG decision at the earliest. In 2020 the median length of time between an RG and CG decision was 339 days. For every additional person from whom R&R is withheld there is a potential saving from financial support payments of around £3,000 per person.<sup>76</sup> There would then be additional cost savings

<sup>74</sup> Totals may not sum due to rounding

<sup>75</sup> Based on the annual average salary at EO grade (£30,000, per hour = £16)

<sup>76</sup> = (339/7) \* £65 = £3,100

of accommodation, which is estimated to be £28 per night.<sup>77</sup> There is therefore a potential estimated cost saving of up to £9,500 per person from no longer receiving accommodation support following the introduction of the measure. From published statistics, an estimate of around 48% of NRM referrals enter the MSVCC.<sup>78</sup> We have assumed this is correct for British potential victims, but all FNOs are assumed to enter support.

399. Using the public order exemption volume estimates results in an estimate 737 FNOs and 140 British nationals per year who would not receive support from the MSVCC following a positive RG decision under this new policy.<sup>79</sup> <sup>80</sup> This could result in an estimated average benefit of £8M per annum in reduced costs to the MSVCC following the legislative change, assuming referral volumes remained constant year on year.

**Table 15: Estimated annual cost savings to the SCA (MSVCC) (£m), 2021-2031**

Year	Total Discounted Benefits (£m)
2021/22	£0
2022/23	£10.2
2023/24	£9.9
2024/25	£9.5
2025/26	£9.2
2026/27	£8.9
2027/28	£8.5
2028/29	£8.3
2029/30	£8.0
2030/31	£7.7
<b>Annual average</b>	<b>£8</b>
<b>Total Benefits</b>	<b>£80.2<sup>81</sup></b>

#### **SCA decision-making resource**

400. There could be a reduction in RG and CG decisions the SCA will be required to make through (i) individuals who fall under the exemptions no longer seeking or consenting to referral into the NRM; (ii) potential victims who do get referred into the NRM but who fall under this policy no longer being subject to a CG decision.

401. A referral into the NRM can act as a barrier to removal after an individual receives a positive RG decision and enable the potential victim to receive support from the MSVCC. If a referral would no longer act as a barrier to removal or enable access to support for some individuals who would fall into these groups, they may not seek or consent to referral into the NRM. This may be particularly relevant for those individuals who fall into these groups but who had been seeking to use an NRM referral to frustrate immigration processes. For the public order exemption this could result in a maximum of 800 fewer referrals per year, saving SCA resource as they would make fewer RG and CG decisions if referrals reduced<sup>82</sup>.

<sup>77</sup> This is the average across all price bands of accommodation per night per person as contracted with the Salvation Army

<sup>78</sup> Calculated by taking the number of entrants to the VCC & NRM who had a positive RG in 2019, scaling the NRM data down by 7.5% for victims in Scotland and Northern Ireland as they have separate support systems

<sup>79</sup> Assuming that regardless of any other application raised at the time of their NRM referral individuals all FNOs who received a positive RG decision (84 per month in 2021) would enter support.

<sup>80</sup> 48% of the 292 British nationals potential victims who have been prosecuted or charged with a criminal offence and had a positive RG decision

<sup>81</sup> Total may not sum exactly due to rounding

<sup>82</sup> From internal analysis on the impacts of defining public order grounds in legislation there may be a decrease in referrals if FNOs no longer see the referral as a serious barrier to removal. We assume this may impact up to 80% of the 1,000 FNOs who made NRM referrals in 2021 (extrapolated from the average across the first 5 months of the year).

402. The SCA would no longer make a CG decision for potential victims who are referred into the NRM and are subject to the exemptions. This would free up SCA decision-making resource. This time saving might be at least partially offset by the additional time required at the RG stage for decision makers to consider whether the exemptions apply (see costs section).

403. There are up to 1,029 potential victims per annum who could be subject to the public order exemption and therefore a potential 1,029 fewer CG decisions to be made by the SCA<sup>83</sup>. There is a potential resource cost saving of £0.6M if all 1,029 potential victims were subject to the exemption and therefore would not receive a CG decision, resulting in an annual average of £0.48M in savings across the 10 year-appraisal period.

**Table 16: Estimated annual cost savings to the SCA (Decision-making resource) (£m), 2021-2031**

Year	Total Discounted Benefits (£m)
2021/22	£0
2022/23	£0.62
2023/24	£0.59
2024/25	£0.57
2025/26	£0.55
2026/27	£0.53
2027/28	£0.52
2028/29	£0.50
2029/30	£0.48
2030/31	£0.46
Annual Average	£0.48
<b>Total Benefits</b>	<b>£4.82<sup>84</sup></b>

***Reduction in costs to the Home Office (Immigration Enforcement)***

404. If an individual is subject to the exemptions, there could also be some cost saving during the removal process. It is likely the individual would not be released from detention therefore giving greater certainty of removal. The policy could reduce the number of failed attempts of removal, which should result in reduced costs to IE as additional flights would not need to be organised. The central estimated marginal cost of a cancelled scheduled return is £270. This is made up of three components: the marginal cost of cancelled subject tickets that cannot be refunded; cancelled escort tickets; and the cancellation fee from the escort suppliers. For every individual who was not removed on their first intended flight prior to the proposed policy change, there could be a saving of £270 or more (depending on the number of failed removal attempts). However, the volumes of cancelled flights due to referral to the NRM is unknown and therefore the total benefit from reduced cancelled flights cannot be quantified.

***Crime Averted***

405. The public order exemption could result in potential victims who are also FNOs with previous criminal convictions not being released from immigration detention. The status of British nationals that fall under this policy change will not change. They will continue to either be in prison or in the community and therefore potential benefits from reduced crime due to this specific policy will not apply. If foreign national potential victims meet the public order grounds and are not released from detention, then this may result in reduced reoffending in the UK.

<sup>83</sup> 737 FNOs who received a positive RG decision and 292 British nationals in 2020 who have been charged or are being prosecuted for an offence.

<sup>84</sup> Total may not sum exactly due to rounding

406. Currently, after a positive RG decision an FNO is generally released from detention. If an FNO is subject to the exemption, they are less likely to be released from immigration detention. Data suggests convicted offenders often go on to commit further offences. The magnitude of this impact is dependent on the recent Adult at Risk (AAR) policy change that has brought detention decisions for potential victims of modern slavery in line with other parts of the AAR policy. The change results in individuals who have received a positive RG decision falling in scope of the AAR policy. This may result in detention being maintained following the safeguards applied through the AAR policy rather than an automatic release, therefore the benefits might be lower than estimated.
407. The table below gives information on reoffending trends following those who were released from custody, received a non-custodial conviction at court, or received a caution and the average cost of a reoffence. If all FNOs who came under the public order exemption after receiving a positive RG decision remained in detention, there could be an estimated benefit of approximately £4M per annum through crime averted. If 737 FNOs per year were released from detention, following a positive RG decision, approximately 27.5% of them are estimated to reoffend on average 3.97 times in the year following their release at an average economic and social costs of each reoffence of £5,024. This only gives the cost of reoffending in one year as the data on trends is limited. Individuals may well keep offending after one year. Therefore, the true social and economic cost of reoffending may be greater that highlighted below.

**Table 17: Summary of reoffending assumptions and costs**

<b>% who reoffend</b>	<b>Average reoffences per reoffender</b>	<b>Social and economic cost of an average reoffence</b>	<b>Total cost</b>
27.5%	3.97	£5,024	£4M

<b>Year</b>	<b>Total Discounted Benefits (£m)</b>
2021/22	£0
2022/23	£3.8
2023/24	£3.6
2024/25	£3.5
2025/26	£3.4
2026/27	£3.3
2027/28	£3.1
2028/29	£3.0
2029/30	£2.9
2030/31	£2.8
Annual Average	£2.9
<b>Total Benefits</b>	<b>£29.5<sup>85</sup></b>

### **Total Benefits**

408. On average the discounted benefits per year are estimated to be £11.5M across the 10-year appraisal period.

**Table 18: Estimated annual discounted benefits (£m), 2021-2031.**

<b>Year</b>	<b>Total Discounted Benefits (£m)</b>
2021/22	£0
2022/23	£14.6
2023/24	£14.1
2024/25	£13.6
2025/26	£13.1
2026/27	£12.7
2027/28	£12.2
2028/29	£11.8
2029/30	£11.4
2030/31	£11.0
Annual Average	£11.5
<b>Total Benefits</b>	<b>£114.5<sup>86</sup></b>

### **Unintended Consequences**

409. There is the potential that this measure may stop people wanting to come forward as possible victims of modern slavery in case it leads to their removal from the UK or because they believe they will not receive support from the system. This could include those who would not fall within the new policy because there could be a misperception that it applied to them.

410. Withholding R&R periods for some individuals who have previously received one could result in potential victims being excluded from support who may have been retraumatized. This might result in additional costs to the victim and potentially society. The number of potential victims subject to this exemption is unknown therefore the potential costs cannot be estimated. However, there could be up to £0.3M in physical and emotional costs per victim as estimated in the Economic and Social Costs of Modern Slavery. Home Office will look to develop clear guidance and processes to manage and mitigate the risk of victims being re-traumatized.

<sup>85</sup> Total may not sum exactly due to rounding

<sup>86</sup> Total may not sum exactly due to rounding

### **Uncertainties, Risks, and Assumptions**

411. The number of potential victims who could be subject to the public order exemption will remain constant throughout the 10-year appraisal period.
412. The number of British nationals who may be subject to the exemption could be an underestimate as the flag in NRM data only looks at current CPS interest but does not include any previous interest.
413. The volumes of potential victims who are subject to the multiple recovery period measure is unknown. The impact on the victim, Modern Slavery Victim Care Contract and other areas therefore cannot be estimated.
414. The costs to the SCA are uncertain as the operational response is under development.
415. We have assumed all FNOs and 48% of British national NRM referrals enter MSVCC support.<sup>87</sup> If volumes are less than this the benefits would be less than estimated.
416. We have assumed all FNOs are subject to removal but some might receive other forms of leave and the timing of removal of is uncertain so the savings might be lower than estimated and accrue in future years.
417. We have assumed potential victims will not be automatically released from detention following a positive RG decision.
418. Potential victims in the MSVCC are all assumed to claim financial support and accommodation support. Some potential victims are likely to be accommodated in asylum support accommodation therefore estimated cost savings are likely to be lower.

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<sup>87</sup> Calculated by taking the number of entrants to the VCC & NRM who had a positive RG in 2019, scaling the NRM data down by 7.5% for victims in Scotland and Northern Ireland as they have separate support systems

### **B4.3 Temporary Leave to Remain**

419. The legislation will provide clarity on the eligibility of confirmed victims of modern slavery with no immigration status for temporary leave to remain under Article 14(1) of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT). The legislation will set out that the Secretary of State for the Home Department (SSHD) must issue guidance setting out the circumstances in which it may be appropriate to grant temporary leave to remain to confirmed victims of modern slavery. The legislative provision will set out eligibility criteria and place parameters around the obligation in Article 14(1)(a) of ECAT. The finer detail of the circumstances in which a confirmed victim may meet the criteria and the procedural ways in which a grant of leave may be considered would be set out in the Immigration Rules and/or policy guidance.

420. The policy will set out that the circumstances in which a specific form of leave should be available for confirmed victims of modern slavery (i.e. those with positive CG decisions) should be limited to the following:

- a) Assisting the person in their recovery from any harm arising from the relevant exploitation to their physical and mental health and their social well being;
- b) Enabling the person to seek compensation in respect of the relevant exploitation; or
- c) Enabling the person to co-operate with a public authority in connection with an investigation or criminal proceedings in respect of the relevant exploitation.

421. The policy would support and build on the end-to-end needs-based approach to support that we are implementing for adult victims of modern slavery in England and Wales. The legislation will clarify that the UK is only obliged to assist with recovery and is not required to ensure recovery in every case. Needs which are unrelated to a victim's modern slavery experience are already covered by existing protection routes, e.g. asylum, humanitarian protection.

### **Background**

422. The Home Office currently publishes guidance on Discretionary Leave (DL) considerations for victims of modern slavery. This sets out the circumstances in which it may be appropriate to grant DL to individuals confirmed as victims of modern slavery, and the considerations that must be made before such a decision is made.

423. Under these criteria, limited numbers of victims are granted DL, although this is also due to many more victims being granted other (and often "higher") forms of leave such as asylum. In 2020, 63 victims of modern slavery that received a positive CG decision were granted DL with 911 not requiring leave (including because they had already been granted asylum) and 376 where no leave was granted.<sup>88 89</sup>

### **Objectives**

424. The objective of this policy is to provide clarity on the eligibility of confirmed victims of modern slavery with no immigration status for a residence permit under Article 14(1) of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT). By clarifying who is eligible for this leave it is intended that decision makers will have clear guidance on when leave can be granted and that victims will have clarity on whether they should ordinarily be eligible for leave.

### **Current System**

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<sup>88</sup> Home Office internal data

<sup>89</sup> A further 1,182 victims had either an outstanding outcome or were awaiting an outcome.

425. The National Referral Mechanism (NRM) is the UK's system for identifying and supporting victims of modern slavery. An individual is considered to be a potential victim of modern slavery after receiving a positive Reasonable Grounds (RG) decision. An individual is considered to be a confirmed victim of modern slavery after receiving a positive Conclusive Grounds (CG) decision.

426. A foreign national who is referred to the NRM is protected from removal until an RG decision is made (usually within five days). If the individual receives a positive RG, they are protected from removal until a CG decision is made. In the year to December 2020, the median time for a CG decision was 340 days. Following a positive CG decision, a foreign national without immigration status will automatically be considered for a temporary grant of discretionary leave to remain. A grant is considered under three criteria: where leave is necessary owing to personal circumstances; where leave is necessary to pursue compensation; or where a victim is helping the police with their enquiries. DL is granted for a limited period which is dependent on the facts of the case; for victims who are pursuing compensation or helping the police it is granted for up to 12 months and where granted due to personal circumstances up to 30 months. When the initial leave expires, victims can apply for a further period of leave.

### **Costs (exc. Familiarisation Costs)**

427. The costs resulting from the legislation will likely be to (i) other government departments; (ii) victims.

#### ***Other government departments***

428. The number of confirmed victims of modern slavery who will be issued Temporary Leave to Remain (TLR) for 'recovery needs' is uncertain. Around 63 victims that received a positive CG in 2020 were issued DL however it is unclear from the available data whether some or all of these would have qualified for TLR under the recovery needs criteria.

429. Victims of modern slavery who are granted TLR will be entitled to claim mainstream benefits or gain employment. The number of victims who will claim mainstream benefits compared to the number who will enter employment following TLR being issued is unknown. The analysis below therefore presents a potential scenario whereby all victims granted TLR will claim mainstream benefits for the 12 months. The estimates below therefore relate to an upper-end estimate as some victims might move into employment rather than claim benefits. The main benefit confirmed victims are likely to claim is Universal Credit (UC). The estimated costs to government focus on the scenario outlined.

430. The number of confirmed victims who will receive TLR for recovery needs is unknown. The analysis therefore uses data on confirmed victims with no immigration status who are receiving MSVCC support (a subset of those eligible for TLR) and scales up to the potential eligible population using NRM data to estimate the potential size of the impacted population.<sup>90</sup> This group are assumed to continue to have recovery needs if they remain in the MSVCC after their CG decision and therefore this is considered as a good proxy.

431. The additional volume of victims who may be awarded TLR is estimated by taking the number of confirmed victims with no immigration status who had not left the MSVCC as of December 2020. The volume of victims in this group is assumed to increase every month using the average monthly inflow. This provides estimates of the number of additional victims who could receive a positive TLR decision over the 10-year appraisal period.

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<sup>90</sup> The MSVCC provides support in England and Wales whereas the TLR policy will cover all confirmed victims covered by the NRM which is a UK wide identification system.

432. This analysis assumes that the policy is implemented in March 2022. At this time approximately 318 victims without immigration status are estimated to have received a positive CG and still be receiving support through the MSVCC. Following implementation, victims then flow off the MSVCC to UC as TLR is granted.

433. This provides the number of victims moving from the MSVCC to UC to which a monthly entitlement can be applied to estimate the potential costs. A weighted average of £1,067.60 is used for those on UC (see Table 19). This is calculated by weighting potential UC entitlements to the demographics of those in the MSVCC in scope.

**Table 19: Weighted maximum monthly cost for those on UC**

<b>Demographic</b>	<b>Maximum Entitlement</b>		<b>Weighted cost</b>
<b>With Dependents</b>			
Under 25, London	£ 1,917	0%	£0
Over 25, London	£ 1,917	6%	£114
Under 25	£ 1,418	1%	£11
Over 25	£ 1,484	4%	£66
<b>Without Dependents</b>			
Under 25, London	£ 995	6%	£59
Over 25, London	£ 1,061	36%	£385
Under 25	£ 870	5%	£45
Over 25	£ 936	41%	£388
<b>Total</b>			<b>£1067.60</b>

434. The total estimate discounted cost of the scenario outlined is around £12.67m in total over the 10-year appraisal period. This includes an estimate for victims provided with support in Northern Ireland and Scotland<sup>92</sup>.

91 Based on VCC data for those in support at 31st December 2020

92 There is data on the number of victims in the VCC which covers England and Wales, but not Scotland and Northern Ireland. 7% of adult NRM referrals are to police forces in Scotland and Northern Ireland, this has been used to scale up the VCC numbers.

**Table 20: PV maximum potential costs to UC**

Year	Total victim inflow	Total number of monthly UC payments	Annual Cost UC (m)
2021/22	0	0	£0
2022/23	500 <sup>93</sup>	5,150	£5.24
2023/24	84	1,006	£1.37
2024/25	84	1,006	£0.96
2025/26	84	1,006	£0.92
2026/27	84	1,006	£0.89
2027/28	84	1,006	£0.86
2028/29	84	1,006	£0.83
2029/30	84	1,006	£0.81
2030/31	84	1,006	£0.76
<b>Total</b>	<b>1,171</b>	<b>13,590</b>	<b>£12.67</b>

435. In addition to those receiving support there are victims who enter the NRM but do not enter MSVCC (or equivalent) support. In 2019 an estimated 52% of adult entrants into the NRM did not enter either the VCC (predecessor to the MSVCC) or the equivalent support in Northern Ireland and Scotland<sup>94</sup>. Under the new policy, a proportion of these victims would be eligible for TLR, assuming victims who do not enter the MSVCC (or equivalent) have the same characteristics as those who do, this would lead to an estimated 1,269 additional victims claiming UC, costing approximately £13.72m over the 10 year appraisal period.

436. In total the discounted cost of UC is estimated at £26.39m over the 10-year appraisal period under this scenario or £2.6m per annum on average.

### **Victims**

437. It is expected that more victims will receive TLR compared to the baseline. However, there might be some distributional impacts which may mean that some victims that would have been granted DL under the current criteria may not be granted TLR under the updated criteria.

438. This could result in confirmed victims that no longer fall under the criteria not benefitting from being able to access mainstream services or work and in principle they could also be subject to removal action, although removal action is unlikely to be taken where the victim is receiving NRM support. Home Office will look to develop clear guidance and processes to manage and mitigate these risks.

439. The data does not allow these distributional impacts to be estimated. Current Home Office policy is to provide tailored move on support for individuals who receive a positive CG decision, informed by a recovery needs assessment, which will minimise any impacts on confirmed victims who are not eligible for TLR as specialist support through the MSVCC is provided on

<sup>93</sup> The inflow is much larger in year 2 as a large backlog of those awaiting a TL decision is cleared

<sup>94</sup> Based on the number of victims who entered the NRM or VCC in 2019 and received a positive RG decision. For victims who received both a positive RG and positive CG decision this is 54%.

the basis of recovery needs, irrespective of the individuals immigration status. We are also currently reviewing the end-to-end system of support to ensure that the victim and their specific needs are at the centre of the support we provide from the outset.

### **Familiarisation Costs**

440. It is expected that more victims will receive TLR compared to the baseline. However, there might be some distributional impacts which may mean that some victims that would have been granted DL under the current criteria may not be granted TLR under the updated criteria. This could result in confirmed victims that no longer fall under the criteria not benefitting from being able to access mainstream services or work and they could also be subject to removal action. The data does not allow these distributional impacts to be estimated.

## Benefits

441. The main benefits of the proposal are to the (i) Home Office (MSVCC and legal challenges); (ii) Justice system; (iii) victim; (iv) the exchequer.

### Home Office (MSVCC)

442. Confirmed victims of modern slavery who are granted TLR are assumed to no longer receive support through the MSVCC.<sup>95</sup> This will result in a cost saving to the Home Office through reduced MSVCC costs.

443. The assessment of the potential costs to *other government departments* estimates the number of confirmed victims that might be granted TLR and therefore leave MSVCC or devolved administration support. Table 21 estimates that 1,089 confirmed victims of modern slavery would leave support under the policy proposal. The estimated cost of victim supported by the MSVCC is £1224 per month. This includes the cost of accommodation and support to recover from their exploitation.

444. This could result in a discounted saving of around £70.23m over the 10-year appraisal period compared to the assumed baseline of confirmed victims with no immigration status remaining in MSVCC support indefinitely. This only covers potential savings to the MSVCC in England and Wales.

**Table 21: Estimated cost savings to HO (£m), 2021-31**

Year	MSVCC additional confirmed victims leaving support	Total number of victim months in the MSVCC saved	Cost saving (m)
2021/22	0	0	0
2022/23	465	3,255	£3.67
2023/24	78	5,391	£6.08
2024/25	78	6,053	£6.83
2025/26	78	6,664	£7.52
2026/27	78	7,227	£8.15
2027/28	78	7,744	£8.74
2028/29	78	8,218	£9.27
2029/30	78	8,650	£9.76
2030/31	78	9,045	£10.20
<b>Total</b>	<b>1089</b>	<b>62,246</b>	<b>£70.23</b>

445. The MSVCC only covers England and Wales so this saving will not cover savings in Scotland and Northern Ireland; in 2020 7% of adult NRM referrals were assigned to police forces in Scotland or Northern Ireland. If the uptake of victim support is the same in Scotland and Northern Ireland as it is in England and Wales, an estimated 1089 victims (table 21) would be affected by the proposed policy change. Assuming the cost of support is the same in Scotland and Northern Ireland as it is under the MSVCC, there would be an additional £5.72m discounted saving over the 10-year appraisal period.

446. In total, the estimated discounted saving under this scenario is £75.94m over the 10-year appraisal period or £7.59m per annum.

<sup>95</sup> This is a simplifying assumption. Some individuals will have ongoing recovery needs that cannot be met outside of the MSVCC and continue to require support from the MSVCC after TLR is granted.



### ***Reduced risk of legal challenge***

447. Legislating is likely to reduce the costs to government associated with legal challenge through potentially reducing the risk of litigation in this area and provide clarity on this specific area of immigration policy for victims of modern slavery. A reduced risk of litigation will present:
- a. Time savings to HO and Government Legal Department staff
  - b. A lesser need for external counsel resulting in cost savings
  - c. A lesser burden on the justice system resulting in cost savings for MoJ including savings to legal aid.
448. There are no data available on the number of challenges specifically related to DL decisions. It has therefore not been possible to quantify the reduction in litigation costs.

### ***Justice system***

449. There is evidence to suggest that certainty about immigration status positively impacts a victim's likelihood in engaging in prosecutions. A comparative study of the role of victim support in prosecuting modern slavery crimes in the USA, the UK, Belgium, and the Netherlands found that the lack of immigration status negatively impacts a victim's ability to engage with prosecutions. This is because:
- a. A fear of deportation contributes to a lack of cooperation with authorities.
  - b. Victims currently face long delays on DL decisions, resulting in uncertainty which impacts victims' decisions on engagement.
  - c. Without leave to remain and access to mainstream services, victims will prioritise their basic needs before pursuit of justice and prosecution.
450. By clarifying the criteria for TLR this uncertainty can be reduced. This may increase victims' engagement with authorities which could result in more prosecutions. In the year ending September 2020, over 2,300 of the outcomes recorded by the police for modern slavery crimes (28%) were not progressed due to lack of support from the victim. If TLR is issued to more victims, this may result in a decrease in the number of cases not progressed due to lack of victim support. However, it is not yet possible to quantify this impact.

### ***Benefits to the victim***

451. For survivors of trafficking and modern slavery, having certainty over immigration status is vital to some victims for their recovery.
452. Ready access to appropriate support services is a significant component of many victims' recovery from their experience of exploitation. TLR will allow access to mainstream services which will give the victim access to longer-term support.
453. TLR will also allow the victim to move into employment if they choose, which can support longer-term recovery.<sup>96</sup> A recent study of the literature on the benefits and barriers from employment for confirmed victims of modern slavery by the University of Nottingham and the Independent Anti-Slavery Commissioner found that employment has a positive impact on victims of modern slavery. These benefits include but are not limited to improved mental

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<sup>96</sup> Nottingham Rights Lab: The Modern Slavery (Victim Support) Bill – a cost benefit analysis (2019)

health<sup>97</sup> and can be central to an individual's identity.<sup>98</sup> Conversely there is evidence that unemployment has a significant negative impact on an individual's self-esteem and happiness levels.<sup>99</sup>

### ***Benefits to the exchequer***

454. The analysis has assumed that all victims will flow off the MSVCC and will receive mainstream benefits. However, some victims might enter employment which may result in an increase in tax revenue. This could also reduce the cost to the government of mainstream benefits. The potential savings have not been estimated here as the scenario presented assumes all victims claim their maximum entitlement to UC.

### **Potential Unintended Consequences**

455. It is possible that this policy change will have the unintended consequence of changing the behaviour of individuals in applying for different forms of leave.

### **Uncertainties, risks, and assumptions**

456. When estimating the number of confirmed victims in scope of this policy the analysis assumes that:

- a. The number of additional victims issued leave under the policy change is unknown. The number of confirmed victims with no immigration status in the MSVCC scaled up to an NRM population is used as a proxy.
- b. The number of confirmed victims in support with no immigration status for Scotland and Northern Ireland is scaled up using NRM data on the proportion of adult NRM referrals they make up.
- c. Children under 16 are not eligible for Universal Credit. Those over 16 are eligible but not if they are in Local Authority care. For this reason, although children are included in the policy change, they have been excluded from the analysis.
- d. The volumes of victims that do not require support and enter the NRM are assumed to have the same characteristics (with regards to positive CG decision and immigration status) as victims in the MSVCC. They are therefore assumed to have the same recovery needs as the MSVCC victim cohort.
- e. The number of confirmed victims with no immigration status entering the MSVCC every month remains constant over the 10-year appraisal period.
- f. All confirmed victims with no immigration status are assumed not to leave the MSVCC voluntarily or receive other forms of leave in the baseline. If some of this group leave the MSVCC then costs to other government departments and benefits to the MSVCC will be lower.
- g. The length of temporary leave is variable. In the scenario the confirmed victims are assumed to claim UC for 12 months.
- h. Once confirmed victims leave support, they are assumed not to re-enter support.
- i. The Single Competent Authority's capacity to make CG and TLR decisions will remain unchanged over the appraisal period.

457. When calculating the MSVCC and UC costs the analysis assumes that:

- a. The demographics (region, dependents) of those in scope remains the same over the appraisal period.

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<sup>97</sup> Curnock, E., Leyland, A.H., & Popham, F. (2016). The impact on health of employment and welfare transitions for those receiving out-of-work disability benefits in the UK. *Social Science & Medicine*

<sup>98</sup> Dodu, N. (2005). 'Is employment good for well-being? A literature review'. *Journal of Occupational Psychology, Employment and Disability*

<sup>99</sup> Theodossiou, I. (1998). The Effects of Low Pay and Unemployment on Psychological Well-Being: A Logistic Regression Approach. *Journal of health economics*.

- b. All victims will be receiving accommodation and financial support, under both the MSVCC and UC.
- c. There is no available data on the number of victims in support in Northern Ireland or Scotland. Police referral location in the NRM dataset has been used as a proxy to estimate the number of victims in these jurisdictions. It is assumed the cost of support in these areas is the same as the cost in the MSVCC.
- d. For the additional UC costs regarding victims who do not enter the MSVCC, the analysis assumes that victims who enter and do not enter the MSVCC have the same characteristics.

458. Education and healthcare costs have not been considered in the analysis. This is because under the status quo, victims with no immigration status and their dependents are entitled to state provided healthcare and education. This will not change as victims are granted TLR.

459. It is likely that the total UC cost will not be as high as the maximum estimated. This is because the estimate assumes all victims claim their maximum entitlement, including housing. In practice, some victims may move into work rather than onto mainstream benefits and therefore may not need to claim for UC (or claim less UC).

460. This analysis also assumes that the new TLR policy will be implemented at the start of March 2022. Following implementation, it assumes that a TLR decision will be made one month after the CG decision.

## B5: Miscellaneous and General

461. Sections B5.1-B5.7 provide analysis of the following measures within the Nationality and Borders Bill

Section	Measure	Overview
B5.1	Age assessment (establishing a board)	This measure is designed as a placeholder to allow the Secretary of State to establish a decision-making function in the Home Office for the assessment of age, referred to as the national age assessment board (NAAB).
B5.2	Age assessment (initial age assessments)	This measure is designed as a placeholder to allow the Secretary of State to bring forward a provision that sets out when it is appropriate for immigration officials to treat an individual claiming to be a child as an adult on the basis of their physical appearance and demeanour.
B5.3	Age assessment (codifying)	This measure is designed as a placeholder for the Secretary of State to make Regulations setting out the principles and guidelines on how to conduct age assessments on individuals where there are doubts as to their claimed age.
B5.4	Age assessment (scientific methods)	This measure is designed as a placeholder for the Secretary of State to make Regulations about the future use of appropriate scientific methods for assessing a person's age, which the Secretary of State only intends to be exercised once she is satisfied that they have been shown to be sufficiently reliable and ethical.
B5.5	Age assessment (statutory right of appeal)	This measure is designed as a placeholder to provide for a statutory right of appeal against the age assessment decisions of local authorities or the NAAB.
B5.6	Amendment of s.77	This measure makes it possible for asylum claims alongside appeals to be processed outside the UK and in another country by amending sections 77 of the Nationality Immigration and Asylum Act 2002.
B5.7	SIAC Gap	Some immigration JRs can neither be sent to the Special Immigration Appeals Court (SIAC) nor subject to Closed Material Procedure in the High Court. This gap means that the Home Office is unable to defend certain types of immigration decisions based on closed information. This measure amends the SIAC Act to enable the Secretary of State to certify additional decisions relating to immigration.

462. The following measures are contained within '5: Miscellaneous and General', but we have been unable to provide analysis in this section as these policies are in development:

- a. Visa Penalties.
- b. Wasted Cost Orders

463. Analysis for the following measures has been provided elsewhere:

- a. **Electronic Travel Authorisations (ETAs):** A separate IA has been produced specifically for the impacts of ETAs, outlining the expected costs and benefits of this new system.

b. **Amendment of s.77:** See Section B2.6

## **B5.1 Age assessment (establishing a board)**

### **Background**

464. A decision needs to be taken about an asylum seeker's age where all the following criteria are met:
- a. their claimed age is doubted
  - b. they claim to be a child but are suspected to be an adult or they claim to be an adult but are suspected to be a child
  - c. there is little or no reliable supporting evidence of the claimed age
465. This is to ensure the individual is treated age-appropriately, that they receive the necessary services and support, and is important for safeguarding children in the UK care system. Many individuals without documentation are clearly children, some of whom may claim to be adults, whilst others are clearly adults claiming to be children.
466. In other cases, however, the position is more doubtful and a very careful assessment of the individual's age is required, with the person provisionally treated as a child until a decision on their age is made pending the outcome of the assessment.

### **Objectives**

467. This provision is designed as a placeholder so the Secretary of State can bring forward provisions that will grant the Home Office statutory powers to conduct age assessments through the creation of a National Age Assessment Body (NAAB). Local authorities will continue to have the option to conduct age assessments themselves.

### **Current System**

468. Local authorities have a duty to provide accommodation and support to an unaccompanied asylum-seeking child under provisions of the:
- a. Children Act 1989 in England
  - b. Social Services and Well-being (Wales) Act 2014 in Wales
  - c. Children (Scotland) Act 1995 in Scotland
  - d. Children (Northern Ireland) Order 1995 in Northern Ireland
469. Therefore, all claimants who are being treated as unaccompanied children must be referred to the relevant local authority. As part of its duties, the local authority will, if necessary, conduct an assessment of the claimant's age in order to determine eligibility for children's services, and in some cases, the level of the claimant's needs.

### **Costs**

470. The creation of the National Age Assessment Body will involve ongoing costs of creating a team of social workers to, where appropriate, conduct age assessments.
471. The ongoing costs of the National Age Assessment Body are estimated to be £3.2m (undiscounted) per year in comparison to the baseline, this is based on pay (£2.6m) and indirect costs (£0.6m) such as travel, hotel, recruitment, IT and estates. We anticipate a fully operational National Age Assessment Body to have 39 FTE, each of these FTE is estimated to cost an average of £68,000 per annum.
472. These figures are very uncertain as local authorities will continue to have the right to conduct age assessments, making it difficult to predict demand for the National Age Assessment Body. However, we expect that most local authorities will utilise the National Age Assessment Body's services and sensitivity analysis will be conducted on this provision.

473. There are potential litigation and court costs that may be incurred if more individuals challenge the age assessment by launching a judicial review, compared to the baseline. Further analysis is needed to estimate this potential cost impact.

474. These costs do not include optimism bias and further analysis will be required to refine these further.

### **Benefits**

475. The economic benefits of the establishment of the National Age Assessment Body depend on its relative success at conducting age assessments in comparison to the baseline.

476. It is unclear how many age assessments the National Age Assessment Body will conduct and what proportion of those assessments will lead to an individual's UASC claim being dismissed and treated as an adult.

477. An indicative break-even analysis suggests that for the National Age Assessment Body to deliver value for money the National Age Assessment Body will need to find at least an additional 85 adults claiming UASC status compared to the current figure by local authorities. This may be an underestimate as this analysis does not include potential litigation and court costs incurred if an individual challenged the age assessment by launching a judicial review, which could be significant. Further analysis is needed to estimate this potential cost impact.

### **Uncertainties, risks, and assumptions**

478. The assumptions and caveats of this analysis are listed below:

- a. The cost of supporting a UASC through the asylum system is approximately £125.00 per day
- b. The costs of supporting an adult asylum seeker (accommodation and subsistence cost) is £21.86 per day.
- c. The cost saving of supporting an adult asylum seeker compared to an adult claiming to be a UASC is £37,646 per year.
- d. The ongoing costs of the National Age Assessment Body are £3m per year.
- e. These estimates exclude optimism bias.
- f. These estimates are based on the savings gained in the first year of the National Age Assessment Body's operation and do not include the cost savings from UASC care leavers that would occur in future years.

## **B5.2 Age assessment (initial age assessments)**

### **Background**

479. See Background of Section B5.1.

### **Objectives**

480. This measure is designed as a placeholder to allow the Secretary of State to bring forward a provision setting out how immigration officials are to conduct initial age assessments.

### **Current System**

481. Where age claims are doubted and in the absence of credible documentary evidence of age, the current policy permits immigration officials to treat an individual claiming to be a child as an adult only where the physical appearance and demeanour of that individual very strongly suggests that they are 25 years of age or over.

### **Costs and benefits**

482. This proposal is at too early a stage of policy development to allow for a quantitative or qualitative assessment of costs and benefits. A fuller consideration of both the size and nature of costs and benefits will be developed to support operational delivery of this policy.

### **B5.3 Codification of age assessment processes**

#### **Background**

483. See Background of Section B5.1.

#### **Objectives**

484. This provision seeks to set out the guidelines and principles on how to conduct age assessments, drawing on existing caselaw and best practice.

#### **Current System**

485. Currently, much of the guidance and the minimum standards (e.g. claimant access to an interpreter during assessment) on age assessments have been taken from the Merton judgement and subsequent case law.

#### **Costs and benefits**

486. This proposal is at too early a stage of policy development to allow for a quantitative or qualitative assessment of costs and benefits. A fuller consideration of both the size and nature of costs and benefits will be developed to support operational delivery of this policy.

## **B5.4 Age assessment - scientific methods**

### **Background**

487. See Background of Section B5.1.

### **Objectives**

488. This provision is designed as a placeholder to allow the Secretary of State to bring forward provisions relating to the introduction of scientific methods of age assessment for use where the claimed age of an individual is doubted. The existing way in which age is assessed is beset by difficulty and this measure is intended to widen the information available to decision-makers to allow them to make better and more reliable decisions.

### **Current System**

489. Currently age disputes are usually determined through a Merton age assessment, which are undertaken by local authority social workers. Scientific evidence can currently be considered in decisions on age, but it is not current practice for the Home Office or local authorities to routinely commission them.

### **Costs and benefits**

490. This proposal is at too early a stage of policy development to allow for a quantitative or qualitative assessment of costs and benefits. A fuller consideration of both the size and nature of costs and benefits will be developed to support operational delivery of this policy.

## **B5.5 Establishment of a statutory right of appeal for age assessment decisions**

### **Background**

491. See Background of Section B5.1.

### **Objectives**

492. This provision is designed as a placeholder to allow the Secretary of State to bring forward a new right of appeal, which will remove the need for protracted and costly judicial review. The intention is that the newly established right of appeal will help to resolve ongoing disputes more quickly for all parties involved.

### **Current System**

493. Currently the only mechanism to dispute age assessment decisions made by local authorities is via Judicial Review, which can place a significant financial burden on local authorities. As a result, local authorities face very difficult decisions which can be unduly fettered by a concern over the financial implications of defending a Judicial Review.

### **Costs and benefits**

494. This proposal is at too early a stage of policy development to allow for a quantitative or qualitative assessment of costs and benefits. A fuller consideration of both the size and nature of costs and benefits will be developed to support operational delivery of this policy.

## **B5.6 Amendment of s.77**

### **Background**

495. This measure makes it possible to remove someone to a safe third country whilst their asylum claim is pending without having to certify in every case by amending Section 77 of the Nationality, Immigration and Asylum Act 2002.

### **Costs and benefits**

496. This proposal is at too early a stage of policy development to allow for a quantitative or qualitative assessment of costs and benefits. A fuller consideration of both the size and nature of costs and benefits will be developed to support operational delivery of this policy.

## **B5.7 SIAC Gap**

### **Background**

497. The Special Immigration Appeals Commission (SIAC) was set up to enable immigration appeals to be defended on the basis of sensitive information and is able to protect a wider range of sensitive information than Closed Material Proceedings (CMP) in the High Court, which can only protect material relating to national security. Immigration reforms between 2007 and 2014 significantly reduced the number of immigration decisions that attract a right of appeal. This leaves a gap known as the 'SIAC gap' because JRs which relate to immigration decisions where there is no right of appeal cannot be certified to be heard by SIAC.

### **Objectives**

498. The intention is to close this gap via a legislative amendment to the SIAC Act 1997 which will allow immigration decisions to be made and defended on the basis of sensitive material, but without giving individuals rights of appeal which they otherwise would not be entitled to. The purpose of the amendment to the legislation would be to ensure that any decision that could be challenged by JR could be certified so it is heard by SIAC in the same way that any decision that can be challenged by appeal can be certified.

499. This will enable the SSHD to certify to SIAC all immigration JRs where it is necessary to protect against the disclosure of information, that could otherwise cause damage to the interests of national security, international relations, the detection and prevention of crime, or is otherwise likely to harm the public interest.

500. This also ensures particular immigration challenges are heard before a specialist immigration tribunal. Doing so will also remove (or at least significantly reduce) the need to apply for closed material proceedings in the High Court for litigation raised against non-appealable immigration decisions, which is costly and time-consuming, requiring a personal decision by the Home Secretary.

### **Current System**

501. Currently, CMPs in the High Court can only protect information where disclosure would harm national security. As a result, the Home Office is unable to defend certain types of immigration decisions involving sensitive information.

502. The SIAC gap has Left us unable to pursue immigration disruptions where we are not able to protect sensitive information. While not all stakeholders have kept records of cases that they would have referred to us were it not for the SIAC gap, operational partners have identified cases that they did not refer during 2020 – 21.

### **Costs**

503. GLD have suggested (although this is heavily caveated) that a JR hearing in the High Court could cost around £250,000 (with SCU's legal costs typically around £60,000 and the Claimant's at up to 3 times more – with the Home Office meeting the cost of the Special Advocate, who is cleared to DV level and permitted to view closed material), however this is heavily caveated as costs will vary according to the complexity of the case, and one instance where a hearing cost approx. £4 million has been cited.

504. GLD go on to estimate that a SIAC review might typically cost "at least 25% less approx." than an equivalent case in the High Court, due to the fact that additional procedures required under CMPs are not required by SIAC. JRs heard in SIAC will increase as a result of the transfer or cases from the High Court to SIAC, and also through an increase in case numbers referred to Out of Country Casework Team for disruptive action. There is uncertainty around

the future volumes of JRs that will be heard in SIAC, as not all subjects currently request a JR. Therefore, we expect volumes to be low.

505. There will be a one-off cost to purchase safes for storing sensitive material.

506. There will be ongoing costs related to:

- a) Representational costs of GLD / Counsel
- b) Special Advocate costs
- c) Court administration costs

507. Legal aid costs - Legal aid costs may increase as a result of this measure, although only by a small degree given the relatively small expected increase in decisions taken and Judicial Reviews launched in response. While the probability of such an increase is medium-high, the overall impact on cost is therefore expected to be low.

508. Ongoing costs are expected to vary greatly on a case-by-case basis, depending on the complexity of the case.

### **Familiarisation Costs**

509. Caseworkers are already familiar with SIAC processes and will only need to be briefed on the new case types that can be certified. Set up costs will therefore be very low

### **Benefits**

510. The ability to move some cases from the High Court into SIAC will result in a reduction in costs of approximately 25% as a Section 6 application for CMP proceedings will not be required.

511. The ability to certify new cases into SIAC will increase the number of harmful individuals who can be prevented from travelling to the UK, and will have the following benefits:

- The prevention of crime / avoidance of harm
- The potential for greater disruption to terrorist and criminal activities in the UK
- Greater ability to act upon, and protect, sensitive information in disrupting terrorist, criminal, extremist, espionage, and other high-threat activities by foreign nationals.
- An enhanced reputation among foreign governments and other international partners in the UK Government's ability to take effective disruptive immigration action against such individuals.
- Increased public confidence in HMG's ability to take a greater range of action against individuals linked to serious criminality, including that which impacts on the UK's reputation as a global financial centre as well as wider criminal activities, and to disrupt terrorist activities and threats from hostile States.

512. It has not been possible to monetise the benefits mentioned above.

### **Potential Unintended Consequences**

513. An increase in the volume of cases heard by courts in private may lead to a perceived reduction in the transparency of the judicial system. The change may lead to practical challenges for private parties in bringing claims, where information could be limited, as Claimants will not have access to the full range of information that is held about them or that has been used in the decision-making process. This is mitigated by the provision of special advocates, the potential to "gist" sensitive material, and the fact that closed proceedings have already been authorised in law.

### **Uncertainties, Risks, and Assumptions**

514. We assume that stakeholders will refer a greater number of cases for action once the SIAC gap has been closed, and that these will translate into a greater number of decisions. There is uncertainty around future referral volumes as not all stakeholders have kept records of cases that they would have referred were it not for the SIAC gap. Operational partners have identified at least three cases that they did not refer during 2020 – 21 as a result of the gap.
515. We assume that the increased volume of referrals will be low and that not all subjects will seek a Judicial Review of their decision.
516. We assume that the SIAC timetable and GLD will be able to accommodate the increased volume of cases. However, there is an operational risk that the SIAC timetable will not be able to accommodate an increased case volume, and of appeals and other legal challenges being backed up within the system. This is mitigated by the fact that we expect the increase in cases to be low volume (but high impact). Experience shows that a low percentage of those who receive an adverse immigration decision challenge it through an application for Judicial Review at present. Both the probability and consequence of this risk occurring are therefore likely to be low. However, the subjects in certain cases, e.g., those involving serious organised crime may prove themselves to be more litigious than others, having greater access to the resources from which to fund litigation, and there is consequently a degree of uncertainty over how many new cases will be certified into SIAC.
517. We are aware that the Judicial Review system is under review, however as the outcome of this is unknown, we cannot take any proposed changes into account and have therefore worked on the assumption that the system will continue to operate in its current format.

# Annex C: Modelling the combined impacts of the Nationality and Borders Bill across the irregular migration system

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# 1. System modelling

We have developed system modelling scenarios to illustrate the potential impacts to the immigration system under the Nationality and Borders Bill. The system is complex, and the number of interrelated changes means it is not possible to assess and sum individual impacts to understand the cumulative impact. Instead, a 'whole-system' model has been developed to understand overall impacts and ensure we are not either missing or double-counting the impacts of measures in isolation.

The model contains 'flows' of people entering the system (e.g. people arriving in the UK irregularly, or foreign nationals within the UK being sentenced for a criminal offence), and then moving through different 'stocks' within the system (e.g. people awaiting an asylum decision, or people in detention awaiting return). People can also 'flow' out of the system (e.g. when returned, when leaving the UK voluntarily, or when granted status in the UK). The number of people entering the model, and the rates at which people move between these populations are based on historical figures for the baseline (largely from 2019). For the scenarios, these inputs are varied to examine how the 'flows' and 'stocks' might change as a consequence of the Bill. The model is designed to focus on eight high-level measures of particular interest, and these are described in section 3.

The impacts must be compared to a baseline with scenarios modelled for the same period to show what the potential impact of policy change could be. We use 2019 as our baseline year, since later statistics are not representative due to COVID-19. However, figures on irregular entry are from a later period (Oct '19 to Sep '20), in order to not ignore the increased numbers of people entering the UK on small boats in 2020..

The model is a simplification. The complex workings of irregular migration processes are only included at a very high level. As a result, the model is focussed on the major changes from the bill, not micro changes to individual parts.

The model does not consider the timescales for implementation, or for the changes to have an impact. We're looking at what the long-term impacts might be once all benefits have been realised and we are at a new 'business as usual'.

## 2. Scenarios

The Nationality and Borders Bill provides the legislative framework that can enable fundamental reform to the UK's approach to irregular migration. This reform is envisaged to encompass:

- international agreements facilitating much higher and more immediate returns;
- the capacity to facilitate such returns;
- streamlining of the asylum system and associated legal processes; and
- a new model for asylum accommodation that, in particular, reflects the substantial cohort of inadmissible returns.

This reform is complex, requiring international negotiation, reform of processes and investment in the new approach. It is the Government's ambition to deliver this.

Three of the scenarios are based on implementation of the Bill measures within the *existing operating system* and the constraints this imposes in terms of impact. These scenarios are described as *low*, *medium* and *high impact* and represent different levels of effectiveness to illustrate the inherently uncertain impact from these changes. These are conservative estimates in comparison to the ambition for wider system reform.

This Bill has been introduced in tandem with ongoing work on the policy, negotiation on international agreements, as well as planning for changes in the operational approach that, taken

together, are intended to enable wholesale transformation. These changes are not quantified in the *existing operating system* scenarios.

To illustrate the Government's ambition for the Bill, a fourth, illustrative scenario is also included showing the potential impacts of the Bill measures when accompanied by wider reforms to the system, including reforms which are aligned to the New Plan for Immigration such as ongoing Asylum system transformation. This is described below as the *fundamental operating system reform* scenario. The estimates in this scenario are also highly uncertain, and would require substantial operational change, investment beyond the costs associated with the Bill, and international agreements.

Enabling fundamental change of this nature requires international agreements to enable returns, significant investment in Home Office and MoJ operations and time to implement the associated programme of work. It would also have dependencies where the Home Office has limited control such as, legal challenge to the specifics or generalities of the changes being made, and the behavioural response of migrants in relation to the intended deterrence effects.

### 3. Impact estimates

#### 3.1. Irregular entries

In the *existing operating system*, it is estimated that planned changes, such as increased civil penalties, might reduce the number of people arriving irregularly through existing routes by between 7% and 17% under the modelled scenarios.

Evidence suggests that people attempting to come to the UK irregularly are motivated and influenced by a range of factors. These scenarios assume that people may be displaced into other (unknown) modes of entry, which may be less successful in enabling people to reach the UK. Those reaching the UK via more concealed routes may also be less likely to be detected on entry (potentially reducing asylum claims), but still increasing the unknown irregular population. Given that these modes of entry are unknown, it's impossible to estimate their likelihood of success accurately – these scenarios assume a 50% success rate for 'displaced' entry attempts, and of those that are successful, 50% of people are detected on entry and claim asylum.

In the *fundamental operating reform* scenario, the number of people entering the UK irregularly is assumed to reduce by 70%, due to additional measures enabled by the bill, tighter controls in mainland Europe, and communications with migrants. Displacement into other modes of entry is still likely, but some people may be deterred by an effective, rapid, and visible third country returns process – though this is uncertain (with strong drivers to migrate and factors such as language and diaspora factoring significantly in migrant journeys) and would require operational reform to ensure people are returned swiftly and on an ongoing basis. Displacement is assumed at lower levels in this scenario, with similar levels of these 'displaced' entry attempts being successful in reaching the UK via other routes, but lower levels detected on entry.

	Baseline	Existing operating system			Fundamental operating system reform
		Low impact	Medium impact	High impact	
Number of people entering the UK irregularly (including those who are not detected)	unknown	down by c. 450/year	down by c. 800/year	down by c. 1,200/year	down by c. 5,900/year

#### 3.2. Asylum claims

Across the system, asylum claims might reduce from a combination of:

- i. Fewer people entering the UK irregularly, and a smaller proportion of people detected on entering and then claiming asylum (see section 3.1). Some people who enter undetected may choose to claim asylum proactively later, but no increase has been modelled as the likelihood of people in the unknown irregular population claiming asylum from the community cannot be quantified.
- ii. Fewer asylum claims in detention following the introduction of an expedited process for detained claimants, as such claims are unlikely to lead to release, and in most instances claimants would still be returned once the claim has been assessed (see section 3.6). However, people seeking to avoid return may raise other barriers instead.

- iii. Fewer applications within the UK at an Asylum Intake Unit (AIU), as the potential benefits for people applying proactively once within the UK will have reduced. This is assumed as a 10% reduction in the *high impact* and *fundamental reform* scenarios. Further reductions may occur in the very long term due to fewer people entering the country irregularly, but the extant irregular population is believed to be sufficient to sustain numbers over the coming years.

Additionally, there might be some displacement from people claiming at an AIU to people claiming at a port on entry, as the differentiated system might encourage some people to claim immediately rather than waiting. As a result, it is assumed that the number of port claims would go up in the *low* and *medium impact* scenarios, but with a consequent decrease in the number of AIU claims.

	Baseline	Existing operating system			Fundamental operating system reform
		Low impact	Medium impact	High impact	
Number of people claiming asylum in the UK	c. 49,700/year	c. 46,600/year (down 6%)	c. 44,600/year (down 10%)	c. 42,400/year (down 15%)	c. 35,400/year (down 29%)
<i>Of which, on entering irregularly</i>	12,900	12,200	11,700	11,300	4,500
<i>Of which, at a port</i>	10,900	12,000	11,400	10,900	10,900
<i>Of which, at an asylum intake unit</i>	19,400	18,300	17,900	17,500	17,500
<i>Of which, following enforcement action</i>	5,800	3,300	2,800	2,000	1,800
<i>Of which, foreign national offenders<sup>100</sup></i>	800	800	800	800	800

### 3.3. Inadmissibility and third country returns

All scenarios assume that 95% of people arriving irregularly are deemed inadmissible, and the department seeks to return them to a safe third country. Additionally, in the *existing operating system scenarios* it is assumed that 15% of people claiming asylum on arrival through a regular port are deemed inadmissible, as are 10% of people who claim asylum within the UK at an asylum screening unit or following enforcement action. These latter proportions increase to 30% and 20% respectively in the *fundamental operating system reform* scenario, to reflect increased cooperation and sharing of biometric data in relation to people who are not claiming asylum immediately on entry.

Returns are dependent on securing effective co-operation and returns agreements. The *low impact* scenario assumes that no such agreements are made, with minimal numbers of people returned on a case-by-case basis.

The *medium impact* scenario assumes that agreements are made that allow the department to resume third country returns, but only as effectively as in the recent past. This re-establishes baseline (2019) performance, with around 3% of people who are declared inadmissible being returned to a third country.

<sup>100</sup> A small reduction in asylum claims from FNOs (e.g. due to the introduction of ETAs) is possible in some scenarios, but within the level of rounding used here and assuming limited further deterrence for this group.

The *high impact* scenario assumes an agreement is reached that allows the department to conduct third country returns efficiently and effectively. Historically return rates for people entering the third country return process have reached around 50% between 2004-2006 but involving far fewer people than recent years (1,650 returns per year). This scenario limits returns to 2,000 people per year – 20% above the mid-2000s peak – to reflect (i) the possibility of formal limits in a returns agreement, (ii) receiving countries informally constraining the number of returns to stay within their administrative capacity, and (iii) operational constraints within the Home Office on increasing the number of enforced escorted returns substantially.

The *fundamental operating system reform* scenario removes this constraint, with 70% of people deemed inadmissible being returned to a third country. This would represent a substantial increase in enforced returns, with significant further investment needed for the detention estate, for additional escorting services to prevent disruption, and for other supporting functions.

Reciprocal returns are included in all scenarios (except *low impact*, where there are no agreements in place) with people being brought into the UK at baseline levels and in all cases, returns are only for cases which have been decided, rather than for any form of overseas decision making

	Baseline <sup>101</sup>	Existing operating system			Fundamental operating system reform
		Low impact	Medium impact	High impact	
Number of people deemed inadmissible	c. 11,200/year	c. 15,600/year (up 38%)	c. 14,900/year (up 33%)	c. 14,300/year (up 27%)	c. 11,200/year (no change <sup>102</sup> )
Number of inadmissible people returned to a third country	c. 300/year	c. zero (down 100%)	c. 400/year (up 33%)	c. 2,000/year (up 5.3x)	c. 7,800/year (up 24x)

### 3.4. The asylum system<sup>103</sup>

For the *existing operating system* scenarios, capacity within the asylum casework system is assumed to be unchanged from the baseline. A lower grant rate at initial decision is used due to a higher credibility threshold for asylum, with the grant rate reduced from the baseline by 5%, 15% and 25% in the three *existing operating system* scenarios.

The overall measures in the Bill reduce the rate of increase of the modelled asylum system population but are not sufficient to reduce the modelled number of people in the asylum system, which would continue to increase (albeit at a much slower rate in the *high impact* scenario). This is because, under these scenarios, lower intake and increased returns do not offset ongoing rises in the population of Failed Asylum Seekers or the number of Appeal Rights Exhausted families. However, these scenarios only include the impacts of the Nationality and Borders Bill; wider transformation and operational improvements within the Home Office are not accounted for here.

<sup>101</sup> 'Inadmissibility' did not exist prior to 2021, so the baseline numbers refer to the number of people where third country return was considered, and the number of those who were subsequently returned to a third country.

<sup>102</sup> It is coincidental that the number of people deemed inadmissible in the *fundamental operating system reform* scenario is the same as in the baseline. In this scenario significantly fewer people are claiming asylum compared to the baseline, but a significantly higher proportion are deemed inadmissible due to increased international cooperation and data sharing. These two effects cancel out almost exactly.

<sup>103</sup> Numbers for 'the asylum system' include people awaiting a decision on their claim, people awaiting an appeal outcome, and failed asylum seekers who are awaiting return (including people who have withdrawn their application or absconded). These numbers do not include people whose claim has been deemed inadmissible and are awaiting return to a third country; however where this fails and the asylum claim is later admitted, then the person is counted in the asylum system from that point onwards.

The *fundamental operating system reform scenario* assumes that the number of asylum caseworkers is increased by 40% to process initial decisions (readjusting as the initial decision population reaches an ideal operating level), and that HMCTS capacity for hearing appeals is increased to keep pace with refusals. These measures represent a substantial increase in staffing which would require significant MoJ lead in time to enact (particularly for judicial recruitment), to be assessed through a Justice Impact Test. However, these measures, if realised alongside reduced applications (section 3.2) would be sufficient to reduce the number of people awaiting an initial decision.

In the short term this would also reduce the modelled number of people in the asylum system overall. However, this trend may not continue after the initial decision queue is reduced to an ideal operating level - if failed asylum seekers are not returned or concluded in even greater numbers than in this scenario there would be a later increase in the overall asylum system population – indicating need for ongoing work in this area.

	Baseline	Existing operating system			Fundamental operating system reform
		Low impact	Medium impact	High impact	
Change in the number of people in the asylum system	+ c. 20,500/year	+ c. 16,500/year	+ c. 13,200/year	+ c. 8,300/year	(decreasing) - c. 11,700/year
Change in the number of people receiving asylum support <sup>104</sup>	+ c. 10,300/year	+ c. 8,200/year	+ c. 6,600/year	+ c. 4,100/year	(decreasing) - c. 5,800/year

### 3.5. Detention use

The *existing operating system* scenarios assume that the number of people in immigration detention remains at pre-COVID levels, with around 1,800 people in detention on average. This also assumes that the department does not create new 'return centres' or any other alternative forms of detention – so all enforced returns are happening from Immigration Removal Centres, Short-Term Holding Facilities or prisons. Similarly, these scenarios assume that part of the detention estate continues to be used to accommodate people arriving in the UK irregularly while their arrival and any subsequent claims are processed.

The *fundamental operating system reform* scenario assumes the department increases detention capacity to 2,200 people by increasing occupancy levels of the existing estate, and possibly also explores effective alternatives to detention. This would take time to realise and require substantial investment in the detention estate and supporting operational functions (as well as policy development for alternatives to detention), but the additional capacity would enable the department to increase third country returns and increase detention of FNOs who have been released into the community.

<sup>104</sup> Section 98, section 95, and section 4 support combined. These estimates do not include people who are receiving support where their claim has been deemed inadmissible.

	Baseline	Existing operating system			Fundamental operating system reform
		Low impact	Medium impact	High impact	
Number of people in immigration detention	c. 1,820	c. 1,820	c. 1,820	c. 1,820	c. 2,200
<i>Of which, foreign national offenders</i>	c. 890	c. 890	c. 890	c.890	c. 1,050
<i>Of which, people awaiting return to a third country</i>	c. 40	c. 0	c. 50	c. 220	c. 550
<i>Of which, people detained for screening immediately after entering the UK irregularly</i>	c. 40	c. 40	c. 40	c. 40	c. 40
<i>Of which, people detained on entry through a regular port</i>	c. 70	c. 70	c. 70	c. 70	c. 70
<i>Of which, other people detained for return from within the UK following immigration offences</i>	c. 780	c. 820	c. 770	c. 600	c. 480

### 3.6. Returns from detention

An effective third country return agreement is assumed to increase returns from detention – perhaps by 2,000 per year in the *high impact* scenario, or 7,800 per year in the *fundamental operating system reform* scenario (see section 3.3).

The introduction of an Expedited Process for Detained Claimants (EPDC) could significantly decrease the proportion of people in detention who claim asylum, and where people do claim, their applications and any resulting appeals could be considered in detention in most instances.

The *low impact* scenario assumes that the proportion of people who claim asylum in detention reduces to 40% due to the introduction of the EPDC. Where people *do* claim asylum, 80% are maintained in detention until a decision is made, and 80% of people who appeal against a negative decision are maintained in detention through to the conclusion of the appeals process. Detention times average 60 nights where people don't appeal, and 120 nights where they do.

The *high impact* scenario assumes that the proportion of people who claim asylum in detention reduces further to 20%. Where people *do* claim asylum, 90% are maintained in detention until a decision is made, and 90% of people who appeal against a negative decision are maintained in detention through to the conclusion of the appeals process. Detention times average 45 nights where people don't appeal, and 90 nights where they do. Average detention times for people who don't claim asylum in detention reduce by 3 nights due to other issues being resolved faster.

The *fundamental operating system reform* scenario uses the *high impact* assumptions for the EPDC, while also increasing the return rates for the EPDC and for people who don't claim asylum in detention to 70%, and for people who were already failed asylum seekers when they entered detention to 40%. This is dependent on the reforms providing an effective way to resolve issues raised in detention swiftly, and that new avenues of challenge do not emerge in their place.

All scenarios assume that there are sufficient people awaiting return to sustain these numbers, despite other measures in the Bill potentially reducing the number of people for whom enforced return is necessary and possible.

	Baseline	Existing operating system			Fundamental operating system reform
		Low impact	Medium impact	High impact	
Number of people returned from detention	c. 9,100/year	c. 9,600/year (up 6%)	c. 10,500/year (up 15%)	c. 12,100/year (up 33%)	c. 19,800/year (up 118%)
<i>Of which, foreign national offenders<sup>105</sup></i>	3,800	3,800	3,800	3,800	5,500
<i>Of which, people returned to a third country</i>	300	zero	400	2,000	7,800
<i>Of which, people detained on entry through a regular port<sup>106</sup></i>	2,700	2,700	2,700	2,700	2,700
<i>Of which, other people detained for return from within the UK following immigration offences (including EPDC)</i>	2,300	3,100	3,600	3,600	3,800

### 3.7. Foreign National Offenders (FNOs)

Changes to the Early Removal Scheme (ERS) may result in people being returned at an earlier time (and therefore a reduction in the prison population), potentially avoiding time in immigration detention in some instances, but there is no expectation that this policy alone will increase the number of FNO returns overall.

Where FNOs have been referred as potential victims of modern slavery, a change to the definition of the public order exemption may help increase returns. In some instances, this may allow deportation to continue following a positive reasonable grounds decision. The *high impact* scenario includes a small increase in returns as a result (though less than 100 so within the rounding for this model). The impact is limited as other issues, such as asylum claims and legal challenges could still be raised by FNOs seeking to avoid deportation.

The *fundamental operating system reform* scenario includes further assumptions where the number of FNOs brought into detention from the community doubles from the baseline to help reduce the number of non-detained FNOs, and that FNO return rates from detention increase to 70%. As in the section 3.6, this increased return rate is dependent on the reforms providing an effective way to resolve issues raised in detention swiftly, and that new avenues of challenge do not emerge in their place.

<sup>105</sup> A small increase in FNO returns is expected in the *medium* and *high impact* scenarios, but within the level of rounding.

<sup>106</sup> Most of these returns are classified as port returns, rather than enforced returns.

	Baseline	Existing operating system			Fundamental operating system reform
		Low impact	Medium impact	High impact	
Number of FNOs returned <sup>107</sup>	c. 5,100/year	c. 5,100/year (no change)	c. 5,100/year (up 0.5%)	c. 5,100/year (up 1%)	c. 6,800/year (up 33%)

### 3.8. Modern slavery referrals

The most common points in the immigration system for identifying potential victims and referring them to the National Referral Mechanism (NRM) are (i) in detention, (ii) on entering the UK irregularly, and (iii) during an asylum interview. The frequency of these events has a direct effect on the number of NRM referrals.

The *high impact* scenario assumes that referrals continue with the same likelihood during these events as in the baseline period, and since all three of these events reduce in frequency, NRM referrals reduce as well. This scenario also includes a small reduction in referrals from FNOs, who may be less likely to seek referral following changes to the public order grounds exemption (see section 3.7).

The *fundamental operating system reform* scenario includes the same assumptions as above, but since the relevant immigration events are even less frequent, the number of NRM referrals reduces even further.

The *low impact* scenario includes a change whereby people are more likely to be referred as potential victims during these immigration events, as a result of officials proactively asking about modern slavery during other applications and events. The extent of this is impossible to estimate as it will depend on precisely how these questions are asked, but the *low impact* scenario assumes the likelihood of referral during these events doubles.

Historically most NRM referrals appear to be unlinked (directly) to an immigration event, and these scenarios assume that the measures in the Bill do not cause a change in the number of referrals from other sources (one-third of referrals are of British nationals, and a further quarter were referred by police forces, local authorities, or non-governmental organisations).

	Baseline	Existing operating system			Fundamental operating system reform
		Low impact	Medium impact	High impact	
Number of people referred to the NRM	c. 10,600/year	c. 13,900/year (up 30%)	c. 10,600/year (see note <sup>108</sup> )	c. 9,900/year (down 8%)	c. 9,100/year (down 15%)
<i>Of which, linked to immigration events</i>	4,300	7,600	4,300	3,500	2,700
<i>Of which, unlinked to immigration events</i>	6,400	6,400	6,400	6,400	6,400

<sup>107</sup> The *existing operating system* scenarios include only a very modest increase in FNO returns. However there are other benefits not included in the model, such as FNOs being returned earlier in the process thereby reducing prison occupancy.

<sup>108</sup> There are competing factors that could lead to an increase or decrease in the number of NRM referrals, as shown in the *high impact* (-8%) and *low impact* (+30%) scenarios. At this stage we can't make a reasoned assumption at which way referral numbers will go. In lieu of this, the *medium impact* scenario uses the 2019 baseline figure of 10,600 referrals per year – though this should not be taken to mean that we expect there to be 'no change'.

## 4. Notes on the baseline estimates

The *baseline* scenario draws on a number of data sources, including published statistics and internal management information. Due to the nature of the model, the *baseline* values must use consistent definitions across all aspects of the system, which sometimes differs from the established definitions (for example, this model considers people individually, whereas some statistics count a family application as a single unit). This section lists the data sources used for the *baseline* values, with notes explaining why they differ from other sources where relevant.

Measure	Baseline	Notes
1. Number of people entering the UK irregularly (including those who are not detected)	unknown	The total number of people entering the UK irregularly is unknown, as those who evade detection are by definition not counted. For this model we refer to the <i>change</i> in this number – i.e. how many more/fewer people would we expect to enter irregularly compared to the (unknown) baseline.
2. Number of people claiming asylum in the UK	c.49,700/year	<u>Published statistics</u> (table Asy_D01) show 45,537 people claimed asylum in 2019, and 38,943 claimed in the year from Oct-19 to Sep-20. The baseline of 49,700 is a hybrid estimate, combining <i>in-country</i> applications from 2019 with <i>irregular entry claims</i> from Oct-19 to Sep-20 (using internal management information to separate the two). In effect this is an estimate how many claims <i>might</i> have been made if in-country enforcement and detention had continued into 2020, as an estimate of 'business as usual' without the effects of COVID-19.
3. Number of people deemed inadmissible / where third country return is considered	c.11,000/year	Internal management information shows that 9,816 cases were created for potential third country returns in 2019. The figure is boosted slightly for the reason given in measure 2 – that if in-country enforcement action had continued throughout 2020 then more asylum claims would likely have been raised, and some of these people would have been referred for third country return.
4. Number of people returned to a third country	c. 300/year	<u>Published statistics</u> (section 4) show 263 transfers out under the Dublin agreement in 2019. The baseline is increased slightly, for the reason given in measure 2 (though this is within the level of rounding used).
5. Additional number of people in the asylum system	20,500/year	Internal analysis shows there were 175,000 people in the asylum system at the end of 2019 (104,000 cases). <u>Published transparency data</u> shows the number of cases in the asylum system was 100,612 at the end of Jun-19, and 109,456 at the end of Jun-20 (table Asy_03), suggesting an increase of c.9,000 cases. The baseline figure is higher because (i) it's a count of <i>people</i> not <i>cases</i> , and (ii) for the reason given in measure 2 – it includes asylum claims that would have been made following in-country enforcement action, had such action continued in 2020.

Measure	Baseline	Notes
6. Additional number of people receiving asylum support	10,300/year	This is a simple estimate that half of the people in the asylum system are receiving asylum support. However, it's comparable to <u>published statistics</u> , showing that the number of people receiving asylum support increased by 11,847 between Sep-19 and Sep-20 (table Asy_07b, including S98, S95 and S4).
7. Number of people in immigration detention	c.1,800	<u>Published statistics</u> (table Det_D03a) show a detained population of 1,826 for 2019 (taken at the end of Sep). A baseline from 2019 has been used as detention has been severely reduced by COVID-19 and the need for social distancing, so 2019 figures give a better indication of business as usual.
8. Number of people returned from detention	c.9,100/year	<u>Published statistics</u> (table Det_D03) show 9,081 people were returned from detention in 2019. An internal breakdown suggests 2,700 had been detained on arrival, 3,800 were FNOs deported for criminal offences, 300 were people returned to a third country, and 2,300 were other people detained within the UK following immigration offences.
9. Number of FNOs returned	c.5,100/year	<u>Published statistics</u> (table Ret_02) show 5,117 FNOs were removed in 2019.
10. Number of people referred to the NRM	c.10,600/year	<u>Published statistics</u> show 10,627 NRM referrals in 2019 (table_1). Of these, the Home Office was listed as the first responder for 4,624 referrals (table_9). Of these, internal analysis suggests that 967 were referred on entering irregularly, 2,035 while in detention, 1,045 on claiming asylum or being interviewed, 246 at a reporting event, and 194 were FNOs referred while in prison (the remaining 137 could not be linked to an immigration event).