# ILLEGAL MIGRATION BILL

# EXPLANATORY NOTES

## What these notes do

These Explanatory Notes relate to the Illegal Migration Bill as brought from the House of Commons on 27 April 2023 (HL Bill 133).

- These Explanatory Notes have been provided by the Home Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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*These Explanatory Notes relate to the Illegal Migration Bill as brought from the House of Commons on 27 April 2023 (HL Bill 133)*

# Overview of the Bill

1 The purpose of the Bill is to create a scheme whereby anyone arriving illegally in the United Kingdom ("UK") will be promptly removed to their home country or to a safe third country to have any asylum claim processed. The Bill will build on the Nationality and Borders Act 2022 ("the 2022 Act"), and the measures set out in the New Plan for Immigration[1], as part of a wider strategy to tackle illegal migration. The purpose of the Bill is to:

- deter illegal entry into the UK;
- break the business model of the people smugglers and save lives;
- promptly remove those with no legal right to remain in the UK; and
- make provision for setting an annual cap on the number of people to be admitted to the UK through safe and legal routes.

2 The Bill includes the following measures:

a. Clause 1 sets out the purpose of the Bill and provides an overview of its contents. The clause also disapplies section 3 of the Human Rights Act 1998.

b. Clauses 2 to 9 (and Schedule 1) place a duty on the Secretary of State to make arrangements for the removal from the UK, as soon as reasonably practicable, of persons who meet the four conditions in Clause 2. The scheme applies to those who come to the UK illegally on or after 7 March 2023 and have not come directly from a territory where their life and freedom were threatened. The duty to make arrangements for removal applies irrespective of whether a person makes a protection claim, human rights claim, or claims to be a victim of modern slavery or human trafficking; protection claims and human rights claims in respect of a person's home country will be declared to be inadmissible to the UK system. The Secretary of State is not required to make arrangements to remove an unaccompanied child from the UK until they turn 18 years old, but there is a power to do so in certain circumstances ahead of them reaching adulthood. Persons within the scheme will be removed either to their home country (where it is deemed safe) or a safe third country where their claim for asylum will be processed.

c. Clauses 10 to 14 confer powers to detain those within scope of the scheme pending their removal and whilst a determination is made as to whether a person falls within the duty to make arrangements for removal. Unaccompanied children may only be detained in circumstances to be prescribed in regulations. Provision is made for the First-tier Tribunal, on application, to grant bail once a person has been detained for a period of 28 days; the Secretary of State will have the power to grant immigration bail at any time as will the High Court in response to an application for a writ of *habeas corpus*. These clauses also codify common law principles, placing emphasis on the Secretary of State's opinion as to whether the time period of detention is reasonable, rather than leaving that determination to the court. This will apply across all immigration detention powers. In order to ensure that, where the duty applies, the Secretary of State is able to remove individuals promptly, the Bill disapplies the duty on the Secretary of State to consult the Independent Family Returns Panel in relation

[1] New Plan for Immigration: legal migration and border control: https://www.gov.uk/government/publications/new-plan-for-immigration-legal-migration-and-border-control-strategy/new-plan-for-immigration-legal-migration-and-border-control-accessible

to the detention of families with children under the powers conferred by the Bill and disapplies it for the purposes of removal of unaccompanied children.

d. Clauses 15 to 20 make provision for the accommodation and support of unaccompanied children pending their removal once they have turned 18 years or whilst awaiting removal if the power to make arrangements to remove under 18s is exercised. The Bill confers a power on the Secretary of State to provide accommodation, and other appropriate support, for unaccompanied children who are subject to the scheme, and a power (enforceable through the courts) for the Secretary of State to transfer responsibility for the care of an unaccompanied child within the scheme to a local authority. These provisions apply to England but with a power, by regulations, to apply them to Scotland, Wales and Northern Ireland.

   Clauses 21 to 28 extend the public order disqualification as provided for in the Council of Europe Convention on Action against Trafficking in Human Beings to persons within the scheme, the effect of which is that provisions in modern slavery legislation barring removal during the minimum 30-day reflection and recovery period, requiring the Secretary of State to grant limited leave to remain in the UK in certain circumstances and in respect of the provision of support, do not apply. The application of the public order disqualification is subject to a limited exception for those co-operating with the investigation of an offence linked to their trafficking or modern slavery where it is necessary for them to remain in the UK to provide such co-operation. These provisions are subject to a sunsetting mechanism so that they can be suspended (and, if necessary, revived) should the Government decide that a change of situation warrants the suspension or revival of the provisions (see paragraphs 3 and 9-14). These clauses also add Foreign National Offenders and others liable for deportation, under provisions other than automatic deportation, to the non-exhaustive list of persons eligible to be considered for the Public Order Disqualification under section 63 of the Nationality and Borders Act 2022. If applied, individuals will no longer benefit from the rights that flow from a positive reasonable grounds decision. Previously the disqualification only brought into scope individuals with a year's prison sentence or longer: this amendment strengthens this power, by applying to those who have served a sentence of any length.

e. Clauses 29 to 36 provide for a permanent bar on those who fall within the scheme from lawfully re-entering the UK or from securing settlement or British citizenship through naturalisation or registration. These bans will be subject to limited exceptions where necessary to comply with the UK's obligations under the European Convention on Human Rights ("ECHR") or other international agreements to which the UK is a party or (in the case of re-entry or limited leave to remain) where there are compelling circumstances.

f. Clauses 37 to 54 make provision in respect of legal proceedings. Clauses 37 to 54 provide that persons subject to removal will have a limited time in which to bring a claim based on a real, imminent and foreseeable risk of serious and irreversible harm arising from their removal to a specified third country or a claim that they do not fall within the cohort subject to the duty to remove. The Bill establishes defined time limits on the submission of such claims, for their consideration by the Secretary of State and for appeals to the Upper Tribunal of the Immigration and Asylum Chamber. These clauses provide that certain decisions of the Upper Tribunal, including refusing permission to appeal, would not be subject to judicial review. All other legal challenges to removal whether on ECHR grounds or otherwise, would be non-suspensive and would therefore be considered by the UK's domestic courts following

a person's removal. Clause 53 makes provision about the circumstances in which interim measures indicated by the European Court of Human Rights affect the duty in Clause 2 to make arrangements for the removal of a person from the UK.

g. Clause 57 extends section 80A of the of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"), which provides that asylum claims from EU nationals must generally be declared inadmissible to the UK's asylum system, to cover nationals of Albania, Iceland, Liechtenstein, Norway and Switzerland, and other countries to be specified in regulations, and to include rights-based claims as well as, as now, asylum claims.

h. Clause 58 requires the Secretary of State, by regulations, to determine an annual cap on the resettlement of individuals admitted to the UK via safe and legal routes (defined in regulations). The annual cap will be determined following consultation with local authorities and other relevant bodies. Clause 59 requires the Secretary of State to lay a report before Parliament, within six months of Royal Assent, detailing existing and any proposed additional safe and legal routes.

i. Clauses 61 to 67 make general provision, including in respect of the Bill's territorial extent and commencement.

# Policy background

3 In 2022, over 45,700 illegal entrants entered the UK having crossed the English Channel in small boats; this compares to some 28,500 in 2021 and 8,500 in 2020[2]. In 2022, many of the illegal entrants originated from safe countries, such as Albania (28% of the total), and all travel through safe countries, such as France or other safe European countries. The annual cost of the asylum system is the highest in over two decades at £3 billion, with £6 million a day spent housing migrants in over 300 hotels.

4 Between 2015 and December 2022 the UK has offered refuge to just under half a million (481,804) people, through safe and legal routes, including those from Hong Kong, Syria, Afghanistan and Ukraine, as well as family members of refugees.

5 The Bill creates a system in which anyone arriving illegally in the United Kingdom will not have their asylum claim, human rights claim or modern slavery referral considered while they are in the UK, but they will instead be promptly removed either to their home country or to a safe third country to have their protection claims processed there. The only way in which illegal entrants will be able to stay in the UK, and then only on a temporary basis, is if they can provide credible and compelling evidence that they face a real, imminent and foreseeable risk of serious and irreversible harm (for example persecution, torture or death) in the specific third country to which they are due to be removed.

## The Nationality and Borders Act 2022

6 The Nationality and Borders Act 2022 ("the 2022 Act") introduced new measures to protect and support those in need of asylum, to deter illegal entry into the UK and to remove more easily from the UK those with no right to be in the UK. The intended cumulative impact of these measures is to dissuade migrants from considering using criminal smugglers to facilitate dangerous and illegal journeys to the UK and therefore to reduce the number of dangerous journeys from safe countries.

7 Following the end of the EU Transition period (on 31 December 2020), changes to the Immigration Rules were brought into effect which amended legal powers to treat cases as inadmissible (that is, the UK does not take responsibility for assessing the asylum claim) where individuals have passed through safe countries or have connections to a safe country where they could have made a claim for asylum. Through the 2022 Act, inadmissibility rules were clarified and placed into primary legislation. This was aimed at encouraging asylum seekers to claim asylum in the first safe country they reach and to deter onward travel to the UK.

8 The 2022 Act also enhanced the enforcement capability of the Home Office by enabling the Department to exclude serious offenders from the National Referral Mechanism (the system for identifying and supporting victims of modern slavery) on public order grounds. It also introduced expedited appeals processes to tackle the mischief of late and opportunistic legal claims. A number of provisions of the 2022 Act came into force on 28 June 2002 and 30 January 2023, further provisions will be commenced in 2023 including reforms to speed up cases through the court system.

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[2] See the Illegal Migration Bill: overarching factsheet: https://www.gov.uk/government/publications/illegal-migration-bill-factsheets/illegal-migration-bill-overarching-factsheet and
Statistics relating to the Illegal Migration Bill: https://www.gov.uk/government/statistics/statistics-relating-to-the-illegal-migration-bill/statistics-relating-to-the-illegal-migration-bill

## Asylum and Illegal Migration

9 There were 74,751 asylum applications (main applicants only) in the UK in 2022, more than twice the number in 20193. This is higher than at the peak of the European migration crisis 2015-16 (36,546 in year ending June 2016) and is the highest number of applications for almost two decades (since 2003). Almost a quarter (24%) came from EU, EEA or EU accession states, including over 14,000 alone from Albania, a safe European country.

10 The annual cost of the asylum system is now the highest in over two decades at £3 billion, including around £6 million a day on hotel accommodation.

11 Methods of irregular entry can be dangerous and leave migrants open to exploitation by organised crime groups. One such method of entry is across the English Channel using small boats, which saw a significant increase since 2020. In 2020, 8,500 people crossed the English Channel in small boats, rising to over 28,500 in 2021 and over 45,700 in 2022.

12 The majority of small boat arrivals claim asylum. In 2022, 90% (40,302 of 44,666 arrivals) claimed asylum or were recorded as a dependent on an asylum application.

13 These high volumes have contributed to an unsustainable backlog. As of 28 June 2022, there were 92,601 cases awaiting initial decision, which the Home Office has committed to clear by the end of 2023.

14 Around two-thirds of those detained after arriving on a small boat are referred into the National Referral Mechanism (the "NRM" is the system for identifying and supporting victims of modern slavery), up from just 6% in 2019. There has been a significant rise in modern slavery caseload due to a 600% increase in referrals since 2014 – in the year to Q3 2014 less than 2,300 potential victims of modern slavery were referred into the NRM but this has risen to almost 16,000 in the year to Q3 2022. This increase means that potential victims of modern slavery waited an average 531 days for a conclusive grounds decision in Q3 2022, up from 165 in Q3 2014.

15 This Bill contains provisions that place a duty on the Secretary of State to make arrangements to remove any person who enters or arrives in the UK illegally, and has not come directly from a territory where their life and liberty was threatened, back to their home country or a safe third country for consideration of any asylum or humanitarian protection claim. The UK will continue to be bound by international treaties on modern slavery– but the Government intends to extend the public order disqualification provided for in the Council of Europe Convention on Action Against Trafficking in Human Beings to exclude persons within the scheme from the protections afforded to potential victims of modern slavery. These measures are intended to remove any incentives which may attract illegal migrants to the UK and to incentivise people to seek protection by safe and legal routes or in the first safe country.

16 In April 2022, the UK Government and the government of the Republic of Rwanda signed a Memorandum of Understanding4 for the provision of a migration and economic development partnership. The arrangement provides a mechanism for the relocation to Rwanda of asylum seekers whose claims are not being considered by the UK. The UK-

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[3] Summary of latest statistics: https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2022/summary-of-latest-statistics#how-many-people-do-we-grant-protection-to

[4]Memorandum of Understanding between the government of the United Kingdom of Great Britain and Northern Ireland and the government of the Republic of Rwanda for the provision of an asylum partnership arrangement: https://www.gov.uk/government/publications/memorandum-of-understanding-mou-between-the-uk-and-rwanda/memorandum-of-understanding-between-the-government-of-the-united-kingdom-of-great-britain-and-northern-ireland-and-the-government-of-the-republic-of-r

Rwanda partnership has been the subject of a number of legal challenges. The High Court concluded[5] on 19 December 2022 that it is lawful for the government to make arrangements for relocating asylum seekers to Rwanda and for their asylum claims to be determined in Rwanda rather than in the UK. The Government is seeking to negotiate similar arrangements with other countries.

17 In 2022, the UK received more than 5,200 asylum applications from unaccompanied asylum-seeking children. Of those applications, the most common age group is 16- and 17-year-olds. In the Bill the Secretary of State is not required to make arrangements to remove an unaccompanied child from the UK (whether they seek asylum or not) until they turn 18 years old, but there is a power to do so whilst under 18. , The Bill provides that this power may only be exercised ahead of them reaching adulthood for the purposes of family reunion with a parent or where removal is to a safe country of origin, where the person has not made a protection claim or in other circumstances specified in regulations made by the Secretary of State. The Bill makes provision for the accommodation of and provision of other support for unaccompanied children by the Secretary of State and local authorities; appropriate bridging provisions would usually be included in the Immigration Rules where removal is temporarily suspended until they are an adult in respect of this cohort.

18 This Bill also introduces a comprehensive set of measures to deter irregular entry and improve the Home Office's ability to remove those with no right to remain in the UK. This includes conferring new powers to detain persons for the purpose of considering whether they are within scope of the scheme and pending their removal. Unaccompanied children will only be able to be detained in circumstances to be prescribed in regulations. There would be no right to bail for 28 days from the date of detention and, barring limited exceptions, any illegal migrants that fall within the scheme will be prevented from qualifying for re-entry, settlement or citizenship.

19 The Bill will provide for two limited circumstances in which a legal challenge would suspend removal; all other legal challenges to removal, whether on human rights grounds or otherwise, would be non-suspensive, that is the legal proceedings in the UK would run their course, but they would not suspend the removal of the person from the UK in the meantime. As a consequence of this, Clause 52 restricts domestic courts granting interim remedies in proceedings relating to a decision to remove a person from the UK under the Bill. Clause 53 makes provision about the circumstances in which interim measures indicated by the European Court of Human Rights affect the duty in Clause 2 to make arrangements for the removal of a person from the UK. A person will not be relocated to an otherwise safe country, such as Rwanda, if they make a human rights-based claim and the Home Office concludes in respect of that claim that there is a real, imminent and foreseeable risk of serious and irreversible harm were that person to be so removed. A person may also challenge their removal on the basis that they do not meet the conditions for removal. Where the Home Office rejects such a claim, the person will have an avenue to appeal the decision in the Upper Tribunal. In a case where the Home Office certifies the claim as clearly unfounded, the person will be able to petition the Upper Tribunal for leave to appeal against the certification of the claim and, if given leave to appeal, the appeal will then be heard. Relocation to a third country will not proceed until any appeal is exhausted. The Bill provides for time limits for each stage of the process in respect of the submission of suspensive claims, their consideration by the Home Office and any subsequent appeal so that removals are not significantly delayed.

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[5] AAA and others -v- Secretary of State for the Home Department - Courts and Tribunals Judiciary: https://www.judiciary.uk/judgments/aaa-and-others-v-secretary-of-state-for-the-home-department/

20 The scheme provided for in the Bill is part of a wider strategy to tackle illegal entry. The Government is working with partners in Europe, especially France and Belgium, to prevent migrants attempting to make their way illegally to the UK. This includes work funded through overseas development aid and activities of law enforcement and intelligence partners including the National Crime Agency. The Government intends to continue working with these partners and all operational partners and agencies to tackle the upstream causes of illegal immigration. On 14 November 2022, the Home Secretary announced a new agreement between the UK and France to strengthen the bilateral partnership to tackle illegal migration at the shared border, with a focus on small boats crossings6. On 13 December 2022, the Prime Minister announced, amongst other things, a new agreement7 with Albania aimed at deterring and disrupting illegal migration (Commons Official Report, column 885 to 888).

## Individuals coming to the UK through safe and legal routes

21 The UK will maintain well-defined safe and legal routes for people in need of protection. With worldwide displacement now standing at around 100 million people, the UK cannot help everyone. UNHCR data on resettlement shows that from 2016 to 2022, the UK resettled over 26,000 individuals, including a large number of children, direct from regions of conflict and instability via established refugee resettlement schemes – the fourth highest number in the world (after the United States, Canada and Sweden). In total, the UK has granted permission to enter to over 480,000 people including through bespoke routes created for those from Afghanistan, Hong Kong and Ukraine.

22 In his statement on 13 December 2022, the Prime Minister committed to continuing to work with the United Nations Refugee Agency ("UNHCR") to identify those most in need of sanctuary so the UK remains a safe haven for the most vulnerable. In the statement the Prime Minister said that, "the only way to come to the UK for asylum will be through safe and legal routes and, as we get a grip on illegal migration we will create more of those routes". The statement reiterates the government's commitment to continue to provide safe and legal routes for protection, with the intention that this commitment is achieved through resettlement routes. The Prime Minister also committed to introduce an annual quota, set by Parliament in consultation with local authorities to determine the country's capacity, and amendable in the face of humanitarian emergencies; Clause 58 gives effect to that commitment.

23 The Government currently operates the following safe and legal routes:

**Global Resettlement Schemes:**

- The UK Resettlement Scheme is the UK's global resettlement scheme, offering a route for United Nations High Commissioner for Refugees-referred refugees from priority situations. The UK Resettlement Scheme was launched in March 2021, following the closure of the Vulnerable Persons Resettlement Scheme and the Vulnerable Children's Resettlement Scheme in February 2021; under the Vulnerable Persons Resettlement Scheme the UK resettled some 20,000 refugees fleeing the conflict in Syria.

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[6] Irregular Migration: Small Boat Crossings - Hansard - UK Parliament Monday 14 November 2022: https://hansard.parliament.uk/commons/2022-11-14/debates/2211143000008/IrregularMigrationSmallBoatCrossings

[7] AAA and others -v- Secretary of State for the Home Department - Courts and Tribunals Judiciary: https://www.judiciary.uk/judgments/aaa-and-others-v-secretary-of-state-for-the-home-department/

- The Mandate Resettlement Scheme resettles recognised refugees with a resettlement need, who have a close family member in the UK who is willing to accommodate them.
- The Community Sponsorship Scheme enables civil society - friends and neighbours, charities and faith groups - to directly support refugees resettled to the UK. This route has been used to resettle individuals predominantly from Syria and Afghanistan.

**Resettlement Schemes for Specific Contexts:**

- The Afghan Citizens Resettlement Scheme, launched in January 2022, provides a bespoke solution to 20,000 people affected by events in Afghanistan.

**Relocation/Visa routes for Specific Contexts:**

- The Afghan Relocations and Assistance Policy, open since April 2021, provides relocation to those who served for or alongside HM Government and military in Afghanistan.
- The British Nationals (Overseas) ("BN(O)") immigration route provides a pathway to settlement for BN(O) status holders and their immediate family members from Hong Kong.
- Homes for Ukraine, the Ukraine Family Scheme and Ukraine Extension Scheme, launched in early 2022, provide a three-year visa to those fleeing the war in Ukraine.

# Legal background

24 The Bill amends the following legislation:

- Section 8 of and Schedule 2 to the Immigration Act 1971 ("the 1971 Act"), which makes provision for exceptions to the requirement to have leave to enter the UK for seamen, aircrews and other special cases, and for the detention of persons liable to examination by an immigration officer or removal respectively.
- The Special Immigration Appeals Commission Act 1997, which establishes the Special Immigration Appeals Commission and sets out its functions.
- Parts 1 and 2 of the British Nationality Act 1981 ("the 1981 Act"), which make provision for the acquisition of British citizenship and British Overseas Territories citizenship after the commencement of that Act respectively.
- Sections 27 and 32 of the 1981 Act which make provision for the registration of minors as British overseas citizens and British subjects.
- Sections 10 and 147 of the Immigration and Asylum Act 1999 ("the 1999 Act"), which makes provision for the removal of persons unlawfully in the UK and defines terms used in Part 8 of that Act which makes provision for immigration detention accommodation respectively.

- Sections 62 and 80A of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"), which confers powers on the Secretary of State to detain persons including pending removal and makes provision for the inadmissibility of asylum claims by EU nationals respectively.
- Section 94 of, and Schedule 11 to, the 1999 Act and sections 18 and 21 of, and Schedule 3 to, the 2002 Act, which make provision for support for asylum seekers.
- Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 ("the 2004 Act"), which makes provision for the removal of asylum seekers to safe countries.
- Section 8 of the 2004 Act, which sets out various behaviours which a specified deciding authority is required to take account of (as being damaging to credibility) when deciding whether to believe a statement made by or on behalf of a person making an asylum or human rights claim.
- Section 5 of the Tribunals, Courts and Enforcement Act 2007, which lists those persons who are to be the judges and other members of the Upper Tribunal.
- Section 54A of the Borders, Citizenship and Immigration Act 2009 ("the 2009 Act"), which makes provision for the Independent Family Returns Panel.
- Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("the 2012 Act"), which sets out the type of civil legal services that may be made available under that Act.
- Section 50A of the Modern Slavery Act 2015 ("the 2015 Act"), sections 9 and 10 of the Human Trafficking and Exploitation (Scotland) act 2015, section 18 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 and Part 5 of the Nationality and Borders Act 2022 ("the 2022 Act"), which makes provision for assistance and support, in England and Wales, Scotland and Northern Ireland respectively, for potential and confirmed victims of slavery or human trafficking and the circumstances in which this may be set aside.
- Sections 60 and 69 of and Schedule 10 to the Immigration Act 2016 ("the 2016 Act"), which place limitations on the detention of pregnant women, facilitates the transfer of responsibility for caring for particular categories of unaccompanied migrant children from one local authority in England to another, and makes provision for immigration bail respectively.
- Sections 54 and 56 of the 2022 Act, which make provision in respect of appeals against age assessments.

# Territorial extent and application

25 Clause 65 sets out the territorial extent of the Bill, that is the jurisdictions in which the Bill forms part of the law. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.

26 Subject to the exceptions described below, the provisions in the Bill extend and apply to the whole of the UK.

27 Clauses 15 to 18, which makes provision for unaccompanied children, applies to England only but Clause 19 enables the Secretary of State to make regulations enabling those clauses to apply to Wales, Scotland or Northern Ireland.

28 Clauses 22 to 24 make separate provision in relation to the disapplication of legislation relating to support for potential victims of modern slavery that applies in England and Wales, Scotland and Northern Ireland. Clause 24 amends the separate modern slavery legislation that applies in England and Wales, Scotland and Northern Ireland.

29 There is a convention ("the Sewel Convention") that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. (In relation to Scotland and Wales, this convention is enshrined in law: see section 28(8) of the Scotland Act 1998 and section 107(6) of the Government of Wales Act 2006.)

30 In the view of the UK Government, the provisions in the Bill do not relate to matters within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly.

31 If, following introduction of the Bill, there are amendments relating to matters within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.

32 See the table in Annex B for a summary of the position regarding territorial extent and application in the UK.

## Extent in the Channel Islands, Isle of Man and the British overseas territories

33 The changes that the Bill makes to the 1981 Act extend and apply to the Channel Islands, Isle of Man and the British overseas territories. Clause 3(7) to (10) also applies to the Channel Islands, Isle of Man and the British overseas territories for the purposes of enabling regulations made under Clause 3(7) (making provision for further exceptions to be made to the duty to make arrangements for removal) to make provision for Clauses 29 to 36 to have effect with modifications to a person to whom such regulations apply. Clause 58 enables other provisions of the Bill to be extended to the Crown Dependencies, with or without modifications, by Order in Council.

# Commentary on provisions of Bill

## Clause 1: Introduction

34 Subsection (1) sets out the purpose of the Bill, namely to prevent and deter unlawful migration and, in particular, migration by unsafe and illegal routes, such as those seeking to enter the UK illegally by crossing the Channel in a small boat.

35 Subsection (2) summarises the main provisions of the Bill directed towards that purpose. Subsection (4) summaries the other immigration-related provisions in the Bill.

36 Subsection (3) reaffirms the established principle that the courts and others should interpret the Bill to deliver the purpose in subsection (1).

37 Subsection (5) provides that section 3 of the Human Rights Act 1998 does not apply in relation to provision made by or by virtue of this Bill. Section 3 of that Act requires the courts to read and given effect to legislation, so far as it is possible to do so, in a way which is compatible with the Convention rights.

## Clause 2: Duty to make arrangements for removal

38 This clause places a duty on the Secretary of State to make arrangements to remove persons to their home country or a safe third country those who have entered or arrived in the UK illegally, and the conditions under which this duty will apply. The duty to make arrangements for removal is absolute subject to the subsequent provisions of the Bill as specified in subsection (11).

39 Subsections (2) to (6) set out the four conditions which must be satisfied for the duty to apply to a person.

40 The first condition (subsection (2)) relates to the lawfulness of a person's entry or arrival in the UK, namely that they either: entered without leave to enter when required or where that leave to enter was obtained by deception; entered in breach of a deportation order; entered or arrived when they were an excluded person within the meaning of section 8B of the 1971 Act (that is, someone who is subject to a travel ban imposed by the United Nations or the UK); arrived without valid entry clearance when required or where that entry clearance was obtained by deception; arrived without an electronic travel authorisation when required or where that electronic travel authorisation was obtained by deception.

41 The second condition (subsection (3)) specifies the duty applies to those that meet the conditions in subsection (2) and entered or arrived in the UK on or after 7 March 2023, that is the date the Bill was first introduced into Parliament.

42 The third condition (subsections (4) or (5)) specifies that the duty applies to persons who did not come directly to the UK from the country in which their life and liberty was threatened by reason of their race, religion, nationality, membership of a particular social group or political opinion (see the definition of a refugee in Article 1 of the Refugee Convention). If a person passed through or stopped in another country where their life and liberty was not threatened, they will not be considered to have come directly to the UK.

43 The fourth condition (subsection (6)) specifies the person requires leave to enter or remain but does not have it, and this does not include limited leave to enter or remain where given to unaccompanied children (subsection (7)).

44 Subsection (7) provides that any leave granted to unaccompanied children under the immigration rules is to be disregarded for the purposes of the condition in (6).

45 Subsection (11) provides that the duty to make arrangements for the removal from the UK of persons who meet the four conditions is subject only to subsequent provisions of the Bill, namely:

- Clause 3 which provides that the duty in clause 2(1) does not require the Secretary of State to make removal arrangements for unaccompanied children until they turn 18 years old, although they may do so whilst they are under 18 using the power in 3(2) and for the Secretary of State to specify other exceptions in regulations.

- Clause 21 (read with sections 61 and 62 of the 2022 Act) which make provision for the duty to be suspended where a person is a potential victim of modern slavery and is cooperating with law enforcement agencies in connection with the investigation or prosecution of an offence relating to them being a potential victim of slavery or human trafficking.

## Clause 3: Unaccompanied children etc

46 The duty on the Secretary of State to make arrangements for removal applies to all persons, regardless of age, who meet the four conditions in Clause 2. However, subsections (1) to (2) provide that the Secretary of State is not required to make arrangements to remove an unaccompanied child from the UK until they turn 18 years old, but there is a power to do so. Clauses 15 to 20 make further provision in respect of the provision of accommodation and other support for unaccompanied children.

47 The Secretary of State is not required to make arrangements to remove an unaccompanied child from the UK until they turn 18 years old, but there is a power to do so. Clause 3(2A) provides that the power in clause 3(2) may only be exercised to remove unaccompanied children ahead of them reaching adulthood for family reunion purposes (reunion with a parent), removal to their country of origin (if from a country listed in section 80AA(1) of the Nationality, Immigration and Asylum Act 2002), removal where no protection claim is made or removal in other circumstances specified in regulations made by the Secretary of State.

48 Clause 3(2B) provides that a discretion may be conferred on the Secretary of State in relation to regulations made under clause 3(2A)(d), i.e. other circumstances where a child may be removed. Subsections (5) to (7) enable the Secretary of State by regulations to specify categories of persons to whom the duty to remove is not to apply, whether on a temporary or permanent basis. Such categories may include, for example, persons subject to extradition proceedings or persons being prosecuted in the UK for a criminal offence.

49 Regulations made under clause 3(2) would follow the affirmative procedure, whereas regulations made under clause 3(5) would follow the negative procedure.

## Clause 4: Disregard of certain claims, applications etc

50 This clause provides that the duty (in clause 2(1)) to make arrangements to remove, or the power to make arrangements in section 3(2), applies to persons that meet the conditions under Clause 2 regardless of whether they have made a protection claim or human rights claim, they claim to be a victim of slavery or human trafficking or have made an application for judicial review in relation to their removal from the UK under the Bill. Where a protection claim or a human rights claim falling within subsection (5) is made by such a person, it will be declared as inadmissible by the Secretary of State and will not be considered in the UK (subsections (2) and (3)). Any such inadmissibility decision is not a refusal of a claim and therefore there is no right of appeal against such a decision (subsection (4)). A human rights claim is within subsection (5) if it is a claim that removal from the UK to a person's country of origin or where they have a passport would be unlawful under section 6 of the Human Rights Act 1998.

51 Human rights claims that relate to a person's removal to a specified safe third country will be admissible, however any such claims will be considered following the claimant's removal to the third country concerned; any judicial review in relation to such a claim will also be considered by the UK domestic courts while the claimant is out of country (by virtue of subsection (1)(d)). The removal of the claimant to the specified safe third country will only be suspended pending consideration of, and any appeal relating to, a serious harm suspensive claim (see Clauses 37 to 47).

52 Subsection (6) applies, for the purposes of the Bill as a whole, the definitions of a "human rights claim" and a "protection claim" in sections 113(1) and 82(2) of the 2002 Act respectively; those definitions are as follows:

- "human rights claim" means a claim made by a person to the Secretary of State at a place designated by the Secretary of State that to remove the person from or require them to leave the United Kingdom or to refuse them entry into the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Convention);

- "protection claim" is a claim made by a person that their removal from the United Kingdom would breach the UK's obligations under the Refugee Convention, or would breach the UK's obligations in relation to persons eligible for a grant of humanitarian protection.

53 The duty to make arrangements to remove illegal entrants who meet the conditions in Clause 2 or the power to make arrangements in section 3(2) applies retrospectively to persons who entered the UK illegally on or after the date the Bill was introduced (namely, 7 March 2023). Subsection (7) make a transitional provision to take account of the fact that a protection, human rights or modern slavery claim made by a person who arrived in the UK between the date of introduction and the date of commencement may have had the claim assessed and determined during this period. In such a case, the determination will stand and they will continue to be dealt with under existing law. The effect of subsection (7) is that where a person has made a claim after introduction that is outstanding on commencement, the duty to make arrangements for removal will apply (by virtue of subsection (1)) and the Secretary of State must declare the claim inadmissible (by virtue of subsection (3)).

## Clause 5 and Schedule 1: Removal for the purposes of section 2 or 3

54 Subsection (1) specifies that where the duty to make arrangements for removal applies, the Secretary of State must ensure the person is removed as soon as reasonably practicable. In the case of an unaccompanied child, this should be as soon as reasonably practicable once they have ceased to be an unaccompanied child, that is once they have turned 18. The provisions also apply to an unaccompanied child where the Secretary of State has decided to exercise the power in section 3(2) to make removal arrangements.

55 A person may be removed to a country or territory where: they have nationality or citizenship; have a passport or other identity document for; where they embarked for the UK from; or where they will be admitted (subsection (3)). These alternatives are subject to the exceptions provided for in subsections (4) to (11).

56 Subsections (4) to (6) provide for exceptions in respect of nationals of countries to which section 80A of the 2002 Act applies. Section 80A of the 2002 Act currently provides that asylum claims from EU nationals must be declared inadmissible to the UK's asylum system, save in exceptional circumstances as a result of which the Secretary of State considers that the claim ought to be considered. Clause 57 extends the application of section 80A of the 2002 Act

to nationals of other safe countries as listed (along with EU member states) in new section 80AA(1) of the 2002 Act. Subsection (4) provides that a national of a country listed in new section 80AA(1) of the 2002 Act may not be returned to their home country (that is a country falling within subsection (3)(a) or (b)) if they have made a protection claim (that is a claim for asylum under the Refugee Convention) or human rights claim and the Secretary of State considers there are exceptional circumstances which prevent the person's removal to that country. Subsection (5) sets out a non-exhaustive list of exceptional circumstances. In such a case a national of a country to which section 80A of the 2002 Act applies may be returned to a third country or territory, but only if that country or territory is listed in Schedule 1 to the Bill (subsection (7)).

57 Subsections (8) and (9) apply to nationals of a country not listed in new section 80AA(1) of the 2002 Act who have made a protection claim or human rights claim (if they have not made such a claim they will be removed to their home country). Such a person may not be removed to their home country (that is one falling within subsection (3)(a) or (b)), but may instead be removed either to the country or territory where they embarked for the UK from or to a country or territory where they will be admitted if, in each case, it is listed as a safe country or territory in the Schedule to the Bill.

58 If the country of removal listed in Schedule 1 is only safe for persons of a certain description, that is, men, it will only be considered a safe country of removal if the person fits that description (subsection (10)).

59 If the country of removal listed in Schedule 1 references only a part of that country, only that part of the country will be considered safe for removal (subsection (11)).

60 Subsection (12) is a further transitional provision linked to that in Clause 4(7). The effect of subsection (12) is that the provisions of this clause governing the country to which a person may be removed will apply to persons who made a claim in the period between the introduction of the Bill and commencement but whose claim is outstanding on commencement.

61 Where additional States are added to the list of safe countries in new section 80AA(1) of the 2002 Act, the same provisions will apply to nationals of these countries if they have made claims after the date of introduction of the Bill, and where that claim has not been decided by the Secretary of State before the country has been added to the list in section 80AA(1) of the 2002 Act (subsection 14).

## Clause 6: Powers to amend Schedule 1

62 Subsections (1) and (5) enables the Secretary of State, by regulations (subject to the draft affirmative and negative procedures respectively), to amend Schedule 1 to the Bill by –

a. adding a country or territory to the Schedule;

b. adding a country or territory to the Schedule in respect of a description of person;

c. modifying a reference to a country or territory in the Schedule, or

d. removing a country or territory from the Schedule.

63 Subsection (1) further provides that the Secretary of State may add a country or territory, or part of a country or territory, to Schedule 1 if is satisfied that:

a. there is in general in that country or territory, or part, no serious risk of persecution, and

b. removal of persons to that country or territory, or part, pursuant to the duty in clause 2(1) will not in general contravene the UK's obligations under the ECHR.

64 In addition to adding a country or territory, or a part of a country or territory, at large, subsection (2) provide that regulations may also add a country or territory or part thereof in relation to a description of person. Subsection (3) sets out a list of characteristics, such as a person's sex, which may be used for the purpose of such descriptions. Schedule 1 to the Bill already lists certain countries where only males may be removed to.

## Clause 7: Further provisions about removal

65 This clause makes further provision about the removal of persons from the UK pursuant to the duty in Clause 2 or the power to make arrangements to remove in section 3(2).

66 Subsections (2) and (3) require the Secretary of State or an immigration officer to give a person to be removed a notice in writing stating the country or territory to which they are to be removed and setting out their right to make a suspensive claim (see Clauses 40 and 41). Removal may not be effected unless the claim period has expired, that is the period to be prescribed in regulations for making a suspensive claim, or the person has notified the Secretary of State (orally or in writing) that they do not intend to make a suspensive claim. If a suspensive claim is submitted, Clause 46 makes further provision to stay removal pending the determination of the claim and any subsequent appeal.

67 Removal may take place by ship, aircraft, train or (road) vehicle and the Secretary of State may give the owner or agents (in effect, the operator of the service) directions requiring them to make arrangement for a person's removal (subsection (4)). This subsection applies where removal is to take place on a scheduled service. Alternatively, subsection (5) provides that the Secretary of State may themselves make the arrangements for removal; in such a case, the Home Office typically charter aircraft to effect removals.

68 Subsection (7) enables a person who has been served with a removal notice to be placed, under the authority of the Secretary of State or an immigration officer, on board a ship, aircraft, train or vehicle in which the person is to be removed. Subsection (8) enables the Secretary of State, or an immigration officer, to require the captain of the ship or aircraft, train manager or driver of the vehicle to prevent a person from disembarking in the United Kingdom.

69 Subsection (11) adds a definition to an "owner" of a ship, aircraft, train or vehicle, and subsection (13) adds a definition of an "immigration officer", which is applicable across the Bill and defined in Clause 64.

70 Subsection (10) applies new paragraph 17A of Schedule 2 to the 1971 Act to the detention powers under subsection (8)(b). It provides that a person liable to detention – under paragraph 16(4) of that Schedule - may be detained for such period as, in the opinion of the Secretary of State, is reasonably necessary to enable the examination, decision, removal or directions to be carried out, made or given.

## Clause 8: Support where asylum claim inadmissible

71 Those individuals who fall within the duty to remove who are not detained will need access to support if they would otherwise be destitute. This clause amends relevant legislation to provide for support on the same basis as those whose claims are declared inadmissible under section 80A or 80B of the 2002 Act.

72 Subsections (2) and (3) amend the provisions of the 1999 Act relating to the provision of accommodation. Section 4(2) of the 1999 Act enables the Secretary of State to provide, or arrange for the provision of, accommodation of a person if they were, but are no longer, an

asylum-seeker, and their claim for asylum was rejected or declared inadmissible under section 80A or 80B of the 2002 Act. Subsection (2) amends section 4(2) of the 1999 Act to extend this power to provide accommodation to cover persons whose asylum claims are inadmissible by virtue of Clause 4 of the Bill. (Section 4 of the 1999 Act is prospectively repealed by paragraph 11 of the 2016 Act but the repeal is not yet in force.) Part 6 of the 1999 Act confers powers on the Secretary of State to provide accommodation and other support for asylum seekers. Subsection (2) amends section 94 of the 1999 Act (which defines terms used in Part 6) so that the term "asylum-seeker" covers those whose asylum claims are inadmissible by virtue of Clause 4 of the Bill.

73 Subsections (5) and (6) amend Part 2 of the 2002 Act which makes provision for accommodation centres for asylum-seekers and their dependents. Subsection (5) amends the definition of "asylum-seeker" that applies for the purposes of Part 2 of the 2002 Act so that it includes those whose asylum claims are inadmissible by virtue of Clause 4 of the Bill. Subsection (6) amends section 21 of the 2002 Act, the effect of which is to provide that a claim for asylum is to be treated as determined for the purposes of Part 2 of that Act when the Secretary of State declares a claim inadmissible under Clause 4 to the Bill. Schedule 3 to the 2002 Act restricts the type of support and accommodation that is provided to, amongst others, failed asylum seekers. Subsection (7) amends paragraph 17(2A), the effect of which is to include persons who have had their asylum claim declared inadmissible under Clause 4 of the Bill within the cohort of failed asylum seekers to whom the provisions in Schedule 3 apply.

## Clause 9: Other consequential amendments relating to removal

74 This clause makes other consequential amendments to existing immigration legislation relating to removal.

75 Subsection (1) inserts new paragraph 11A into Schedule 2 to the 1971 Act which provides that paragraphs 8 to 10 of that Schedule (which makes provision for the removal of persons refused leave to enter and illegal entrants) do not apply to persons where the duty to make arrangements to remove in Clause 2 applies or the power to make removal arrangements in section 3(2) applies.

76 Subsection (3) inserts new subsection (12) into section 10 of the 1999 Act (which makes provision for the removal of persons unlawfully in the UK) which provides that that section does not apply to persons where the duty to make arrangements to remove in Clause 2 applies or the power to make removal arrangements in section 3(2) applies.

77 Subsection (4) amends section 156 of the 1999 Act, the effect of which is that the provisions of that section (which enables the Secretary of State to make arrangements for the escorting of detained persons by contract or otherwise) apply to the removal of persons subject to the duty to remove in Clause 2.

78 Subsection (5) amends section 80A of the 2002 Act, which provides that asylum claims (that is a claim by a person that to remove them from the UK would breach the UK's obligations under the Refugee Convention) from EU nationals must generally be declared inadmissible to the UK's asylum system. New subsection (5A) of section 80A provides that the inadmissibility provisions in that section do not apply to a person to whom Clause 2 applies, or a family member of such a person. Instead, the inadmissibility provisions in Clause 4 will apply.

79 Subsection (6) amends Schedule 3 to the 2004 Act (which makes provision for the removal of asylum seekers to safe third countries) to disapply paragraphs 3, 8 and 13 of that Schedule (which make provision for the determination of a safe third country to which a person who has made an asylum claim may be removed) to persons where the duty to make arrangements

to remove in Clause 2 applies or the power to make removal arrangements in section 3(2) applies.

## Clause 10: Powers of detention

80 This clause makes provision for the detention of persons falling within Clause 2, that is persons liable to removal to their home country or a safe third country pursuant to the duty imposed on the Secretary of State by Clause 2, together with their family members.

81 The clause amends paragraph 16 of Schedule 2 to the 1971 Act which makes provision for the detention of persons liable to examination or removal. Specifically, paragraph 16 enables a person to be detained under the authority of an immigration officer pending their examination, pending a decision to give or refuse them leave to enter, or pending a decision to remove in the following circumstances:

- where they have arrived at a port and they are required to submit to examination (usually questioning) under paragraph 2 of Schedule 2 to the 1971 Act, pending that person's examination and pending any decision to give or refuse leave to enter (paragraph 16(1) of Schedule 2);
- where their leave is suspended at port under paragraph 2A of Schedule 2 to the 1971 Act (examination of persons who arrive with continuing leave), pending completion of that person's examination and a decision whether to cancel that leave (paragraph 16(1A) of Schedule 2 to the 1971 Act);
- where they are required to submit to further examination (usually questioning) under paragraph 3(1A) of Schedule 2 to the 1971 Act (examination of persons embarking or seeking to embark in the UK), for up to 12 hours pending completion of that examination (paragraph 16(1B) of Schedule 2 to the 1971 Act); and
- where there are reasonable grounds to believe that they are a person in respect of whom removal directions may be given under paragraphs 8 to 10A or 12 to 14 of Schedule 2 to the 1971 Act pending a decision to give such directions or pending removal in pursuance of such directions (paragraph 16(2) of Schedule 2 to the 1971 Act).

82 Subsection (2) inserts new sub-paragraphs (2A) to (2K) into paragraph 16 of Schedule 2 to the 1971 Act. New sub-paragraph (2C) confers four new powers of detention. New paragraph (2C) (a) enables a person to be detained under the authority of an immigration officer where the immigration officer suspects that the person falls within the cohort specified in Clause 2; such detention may last until a decision is taken that the person does indeed fall within the cohort. New paragraph (2C) (b) provides that where the Immigration Officer suspects that the Secretary of State has a duty to make arrangements for removal, an individual may be detained pending a decision on whether the duty applies. New paragraph (2C) (c) provides that once a determination has been made that a person is subject to the duty to remove, they may be detained pending the person's removal. New paragraph (2C) (d) enables an unaccompanied child to be either detained pending removal under Clause 3(2) or, where an unaccompanied child is temporarily exempt from the duty to remove by virtue of Clause 3(1), pending the granting of limited leave under the Immigration Rules, new section 8AA of the 1971 Act (see Clause 29) or section 65(2) of the 2022 Act (which provides for the giving of limited leave to victims of modern slavery).

83 New sub-paragraph (2D) confers a regulation making power which enables the Secretary of State to set out in regulations the specific circumstances in which an unaccompanied child may be detained under the powers of detention set out in new sub-paragraph (2C).

84 New sub-paragraph (2E) confers a regulation making power which enables the Secretary of State to set out in regulations, if required, time limits that apply in relation to the detention of an unaccompanied child under sub-paragraph (2C)(d)(iv), which is detention for the purpose of removal.

85 New sub-paragraph (2F) provides that the regulation making power under sub-paragraph (2D) confers a discretion on the Secretary of State or an immigration officer when exercising the relevant powers of detention for an unaccompanied child.

86 New sub-paragraph (2G) provides that the regulations under sub-paragraph (2D) or (2E)

87 New sub-paragraph (2H) provides that a person detained under new sub-paragraph (2C) or (2D) may no longer be detained under paragraph 16(1), (1A), (1B) or (2) as described in paragraph 78 above; this provision ensures clarity as to which immigration detention powers should be applied.

88 New sub-paragraph (2I) provides that a person detained under new sub-paragraphs (2C) may be detained in any place the Secretary of State considers appropriate (this includes, but is not limited to, pre-departure accommodation, a removal centre or a short-term holding facility – see section 147 of the 1999 Act).

89 Subsection (4) amends the definition of "pre-departure accommodation" in section 147 of the 1999 Act. The term means a place used solely for the detention of detained children and their families for a period of not more than 72 hours, or not more than seven days in cases where the longer period of detention is authorised personally by a Minister of the Crown. The effect of the amendment is such that a person is detained under the powers conferred by new paragraph 16(2C) or (2D) of Schedule 2 to the 1971 Act y may be detained for any period in pre-departure accommodation.

90 Subsection (6) inserts new subsections (2A) to (2I) into section 62 of the 2002 Act. That section confers detention powers on the Secretary of State akin to those conferred on immigration officers by Schedule 2 to the 1971 Act. New subsections (2A) to (2E) mirror the provisions in new paragraphs 16(2C) to (2G) described above.

91 Subsections (7) to (10) make further changes to section 62 of the 2002 Act consequential to the insertion of new subsections (2A) to (2E).

92 The detention power conferred by this clause is not subject to certain limitations that apply to other immigration detention powers. Subsection (11) provides that the limitation on the detention of pregnant women to a maximum of 72 hours (or seven days when the longer period of detention is personally authorised by a Minister of the Crown) as provided for in section 60(8) of the 2016 Act does not apply to detention under this clause.

## Clause 11: Period for which persons may be detained

93 This clause replaces in part the common law principles with a codified statutory version of the second and third principles. The four principles, which apply with necessary modification to all immigration detention powers, are as follows:

i. the Secretary of State must intend to deport the person and can only use the power to detain for that purpose;

ii. the deportee may only be detained for a period that is reasonable in all the circumstances;

iii. if, before the expiry of the reasonable period, it becomes apparent that the Secretary of State will not be able to effect deportation within a reasonable period, they should not seek to exercise the power of detention;

iv. the Secretary of State should act with reasonable diligence and expedition to effect removal.

94 As well as codifying, in part, the *Hardial Singh* principles, this clause also overturns the common law principle established in *R(A) v SSHD* [2007] EWCA Civ 804 (and later authorities) that it is for the court to decide, for itself, whether there is a reasonable or sufficient prospect of removal within a reasonable period of time.

95 Subsection (1)(a) inserts new sub-paragraph (5) in paragraph 16 of Schedule 2 to the 1971 Act, which confers a power to detain persons liable to examination or removal, the purpose of which is to signpost the provisions in new paragraph 17A. Subsection (1)(b) inserts new paragraph 17A(1) to (5) into Schedule 2 to the 1971 Act. It provides that a person liable to detention under paragraph 16 may be detained for such period as, in the opinion of the Secretary of State, is reasonably necessary to enable the examination, decision, removal or directions to be carried out, made or given. The powers to detain under paragraph 16 apply irrespective of any impediment to those statutory purposes for the time being. The effect of this clause is to clarify that it is for the Secretary of State, rather than the Courts, to determine what is a reasonable period to detain an individual for the specific statutory purposes (for example, to effect removal from the UK). If the Secretary of State does not consider that the examination, decision, removal or directions will be carried out, made or given within a reasonable period of time, the person may be detained for a further period that is, in the opinion of the Secretary of State, reasonably necessary to enable arrangements to be made for release that the Secretary of State considers to be appropriate.

96 Subsections (2) to (4) amend paragraph 2 of Schedule 3 to the 1971 Act, section 10(9) of the 1999 Act and section 36 of the 2007 Act respectively so that the codification of the second and third *Hardial Singh* principles, as described in paragraph 87 above, applies to the detention powers provided for in those provisions (which relate, in turn, to the detention of persons subject to a deportation order, of persons unlawfully in the UK and of foreign criminals subject to automatic deportation).

## Clause 12: Powers to grant immigration bail

97 This clause amends Schedule 10 to the 2016 Act which makes provisions for the grant of bail by either the Secretary of State or the First-tier Tribunal to persons in immigration detention. Sub-paragraphs (1) to (3) of paragraph 1 of Schedule 10 set out the categories of persons being detained or liable to be detained who may be given immigration bail. This clause also makes provision to restrict the jurisdiction of the courts to review the lawfulness of a decision to detain under the new powers in Clause 10, or a decision by the Secretary of State to refuse bail under Schedule 10 of the 2016 Act where an individual is detained pursuant to one of the powers in Clause 10.

98 Subsection (2) amends paragraph 1(1) and (3) of Schedule 10 so that those detained under new sub-paragraphs (2C) and (2D) of paragraph 16 of Schedule 2 to the 1971 Act (as inserted by Clause 10) and Section 62(2A) or (2B) of the Nationality, Immigration and Asylum Act 2002 also fall within the categories of detained persons who may be given immigration bail in accordance with the provisions in Schedule 10 to the 2016 Act.

99 Subsection (3)(b) inserts new paragraph 3(3A) into Schedule 10 to the 2016 Act, the effect of which is that the First-tier Tribunal may not grant immigration bail to a person detained under paragraph 16(2C) or (2D) of Schedule 2 to the 1971 Act or section 62(2A) or (2B) of the Nationality, Immigration and Asylum Act 2002 until 28 days has elapsed from the date the person was first detained under those provisions. There is no automatic right to bail after the 28 day period, however after the 28 day period there will be no restriction on the ability of the First Tier Tribunal to grant bail. In considering an application for bail, the First-tier Tribunal is required to take into consideration the matters specified in paragraph 3(2) of Schedule 10; such matters already include the likelihood of the person failing to comply with a bail condition (bail conditions are specified in paragraph 2(1) of Schedule 10, for example, a requirement that the person periodically reports to the Secretary of State or other specified person). Subsection (3)(a) inserts two new sub-paragraphs into paragraph 3(2) which set out two further matters that must be considered by the First-tier Tribunal. Those additional matters are whether the Secretary of State has a duty, under Clause 2(1) or 7 of the Bill, to make arrangements for the removal of the individual.

100 Subsection (4) inserts new paragraph 3A into Schedule 10 to the 2016 Act, the effect of which is that during the first 28 days of detention an individual will have no ability to challenge their detention via the courts by way of judicial review, unless the challenge relates to grounds of bad faith or is made in such a procedurally defective way as to amount to a fundamental breach of the principles of natural justice. This applies in relation to decisions to detain under any of the powers in Section 11, or in relation to a decision by the Secretary of State to refuse bail, where an individual is detained pursuant to one of those powers. During the 28 day period there will be no restriction on an individual's ability to apply for a writ of habeas corpus (or the equivalent procedure in Scotland). There will also be no restriction on an individual's ability to claim damages in relation to unlawful detention, for any time period, including in respect of the first 28 days of detention.

## Clause 13: Disapplication of duty to consult Independent Family Returns Panel

101 Section 54A of the Borders, Citizenship and Immigration Act 2009 ("the 2009 Act") makes provision for the Independent Family Returns Panel ("IFRP"). The IFRP provides advice on the safeguarding and welfare plans for the removal of families with children who have no legal right to remain in the UK, and have failed to depart voluntarily. The IFRP makes recommendations to the Home Office, ensuring the welfare needs of children and families are met when families are returned to their home country (or, in asylum cases, the third country where the asylum claim legally must be heard). Section 54A(2) of the 2009 Act requires the Secretary of State to consult the IFRP in every family returns case, on how best to safeguard and promote the welfare of the children of the family (subsection (2)(a)), and in each case where detention in pre-departure accommodation is proposed on the suitability of so doing, having particular regard to the need to safeguard and promote the welfare of the children of the family (subsection (2)(b)).

102 This clause inserts new subsections (3A) and (3B) into section 54A of the 2009 Act which disapply the duty on the Secretary of State to consult the IFRP under section 54A(2)(a) and (b) in cases where the proposed removal and detention of families with children is under the powers conferred by Clause 2 or 3, or new paragraph 16(2C) or (2D) of Schedule 2 to the 1971 Act, or section 62(2A) or (2B) of the Nationality, Immigration and Asylum Act 2002 (see Clause 11 above).

## Clause 14 and Schedule 2: Electronic devices etc

103 This clause introduces Schedule 2 to the Bill which confers powers to search for, seize and retain things on which relevant information is stored in electronic form, and to access, copy and use that information.

104 Paragraph 1 of Schedule 2 sets out that where "relevant person" is used throughout the Schedule, this refers to a person who is liable to be detained under paragraph 16(2C) of Schedule 2 to the 1971 Act and who entered or arrived in the UK on or after this schedule comes into force.

105 Paragraph 2 defines "appropriate adult", "container", "intimate search", "item subject to legal privilege", "relevant article", "relevant function", "relevant information", "ship" and "vehicle" for the purpose of the Schedule.

106 Paragraph 3 provides powers for an immigration officer to search a relevant person and explains the types of search that are authorised. Sub-paragraph (3) sets out a number of safeguards required where a search under sub-paragraph (2)(c), in which the officer may require the person to remove any clothing, is carried out.

107 Paragraphs 4 to 6 provide powers for an immigration officer to search, in certain circumstances, vehicles or containers, premises, and personal property, and sets out what those circumstances are.

108 Paragraph 7 provides powers for immigration officers to seize any relevant article which has been found on a search under Schedule 2 or appears to the officer to be, or have been, in the possession of a relevant person. This power is not intended to enable immigration officers to seize legally privileged information.

109 Paragraph 8 provides that an immigration officer or the Secretary of State may retain an article seized under Schedule 2 for as long as they consider it necessary for a purpose relating to any function of an immigration officer or a function of the Secretary of State in relation to immigration, asylum or nationality. When it is no longer considered necessary to retain it, the article must be returned. Sub-paragraph (2) provides a power to make regulations (subject to the negative procedure) setting out circumstances in which a relevant article will not need to be returned. This is necessary to ensure that, for example, where evidence of non-immigration related criminal offending is found, this can be passed on to the police or other appropriate law enforcement agency.

110 Paragraph 9(a) provides a power for an immigration officer or the Secretary of State to access and examine any information stored on a relevant article that is retained under paragraph (8). Where relevant information is found, paragraph 9(b) provides a power to copy and retain that information. Paragraph 9(c) provides a power to use any information retained under paragraph 9(b) for any purpose relating to a relevant function.

111 Paragraph 10 provides that the Secretary of State may by regulations (subject to the draft affirmative procedure) make provision about how articles that contain or may contain legally privileged information should be handled, including their being seized.

112 Paragraph 11 provides that the Secretary of State may by regulations (subject to the negative procedure) make provision for the powers available to immigration officers in Schedule 2 to be available to other people, including persons designated by the Secretary of State, such as contractors.

## Clause 15: Accommodation and other support for unaccompanied migrant children

113 Under Clause 3 of the Bill, while unaccompanied migrant children are subject to the duty to make arrangements for the removal of illegal migrants, the duty in section 2(1) does not require the Secretary of State to make arrangements for removal whilst the unaccompanied child is under 18, but there is a power to do so. This clause, together with Clauses 16 to 20, make provision for the accommodation of unaccompanied migrant children in scope of the duty pending their removal as adults or if it is decided to use the power to remove as an

unaccompanied child. These powers do not apply to unaccompanied migrant children outside the scope of the duty to make arrangements for removal.

114 Subsections (1) to (3) confer a power on the Secretary of State to provide, or arrange to provide, accommodation and other support to unaccompanied migrant children in England.

115 Subsections (1) to (3) are applied retrospectively as having had effect at all times on or after 7 March 2023 (that is, the date the Bill was first introduced).

116 The clause does not require the Secretary of State to provide this accommodation but provides the power to do so if such provision was felt appropriate. The clause also allows the Secretary of State to ask a third party to provide this accommodation to unaccompanied children. A child in scope of the scheme might enter local authority care without first being accommodated under this power. Whilst the clause contains no time limit on how long any child spends in Home Office accommodation, the policy intention is that their stay is a temporary one until they transfer into local authority care.

117 The government expects local authorities to meet their statutory obligations to unaccompanied children from the date of arrival and for the Home Office to only step in sparingly and temporarily. The Secretary of State is currently not in the position of corporate parent to any unaccompanied child The Home Office does not have, and therefore cannot discharge, duties under Part 3 of the Children Act 1989. It is for the local authority where an unaccompanied child is physically located to consider its duties under the Children Act 1989. There is nothing in the Bill which changes this position.

## Clause 16: Transfer of children from Secretary of State to local authority and vice versa

118 This clause facilitates the transfer of an unaccompanied migrant child from accommodation, which the Secretary of State has the power to provide or arrange to provide under Clause 15, to a local authority in England. These powers do not apply to unaccompanied migrant children outside of the scope of the duty to make arrangements for removal and do not apply to those aged 18 and over.

119 The clause provides a mechanism for the Secretary of State to decide that a child is to cease residing in such accommodation and to then direct a local authority in England to provide accommodation to the child under its duties in section 20 of the Children Act 1989 after five working days of the direction being made. The Secretary of State may also apply this power to direct a local authority in England to cease looking after an unaccompanied migrant child and to transfer a child into Home Office provided accommodation after five working days of the direction being made. This power can also be used where the child has not previously been in Home Office provided accommodation, for example where they first entered a local authority care placement upon arrival to the UK.

120 The policy intention is that this clause will allow the Secretary of State to transfer a child quickly into local authority care in England if that child is in Home Office provided accommodation. This clause does not apply to transfers where the unaccompanied child is a looked after child in the care of one local authority and that local authority seeks to transfer that child to another local authority.

## Clause 17: Duty of local authority to provide information to the Secretary of State

121 This clause enables the Secretary of State to direct local authorities in England to provide information about the accommodation and support provided to children in their care (or other information as may be specified in regulations (subject to the negative procedure)). This will inform arrangements made for the transfer of particular unaccompanied migrant children

from the Secretary of State to that local authority or vice versa. The Secretary of State may specify the form, manner and timescales in which a local authority must provide such information.

122 The policy intention is to ensure there is a legal framework to allow for the sensible flow of information that would be relevant to a child transferring into local authority care or out of their care. This is akin to existing arrangements already set out in section 70 of the 2016 Act for the operation of the National Transfer Scheme ("NTS"). The NTS enables the safe transfer of unaccompanied children in the UK from one local authority to another local authority. All local authorities with children's services in the UK have been directed to participate in the NTS.

## Clause 18: Enforcement of local authorities' duties under sections 16 and 17

123 This clause provides a mechanism for the enforcement, should it be necessary, of the duties on local authorities imposed by Clauses 16 and 17.

124 Subsections (1) and (2) enable the Secretary of State to make an order declaring that a local authority is in default of a relevant direction under clause 16 or a duty under clause 17. Such an order must specify the reasons for the making of the order. No order may be made in circumstances where the Secretary of State is satisfied the local authority has a reasonable excuse for its failure to comply with a relevant direction or duty.

125 Subsections (3) and (4) provides for an order made under subsection (1) to include directions to the local authority for the purpose of ensuring compliance with the direction or duty within a specified time frame and for such directions to be enforced by a mandatory order made by the High Court; whilst not provided for in this bill breach of an order by the local authority would constitute a contempt of court, the maximum penalty for which includes an unlimited fine.

## Clause 19: Extension to Wales, Scotland and Northern Ireland

126 This clause enables the Secretary of State to make regulations (subject to the affirmative procedure) to extend the provisions made by Clauses 15 to 18 to Wales, Scotland and Northern Ireland. Such regulations may amend, repeal or revoke any enactment, including provisions in the Illegal Migration Act.

127 This meets the policy intention that the powers in this bill relating to the accommodation, transfer, information sharing and enforcement with respect to unaccompanied children in the scope of this scheme will be applied to the whole of the UK. These provisions build on the existing burden sharing provisions in respect of unaccompanied asylum-seeking children in the 2016 Act.

## Clause 20: Transfer of children between local authorities

128 This clause makes consequential amendments to section 69 of the 2016 Act which facilitates the transfer of responsibility for caring for particular categories of unaccompanied migrant children from one local authority in the UK to another.

129 Section 69(9) defines a "relevant child" for the purpose of such transfers; subsection (2) adds an unaccompanied child within the meaning of the Illegal Migration Act to the definition of a relevant child (new section 69(9)(d) of the 2016 Act).

130 The effect of this amendment is that once the Secretary of State has transferred responsibility for the care of an unaccompanied migrant child to a local authority under the provisions in clause 16, that authority may subsequently transfer responsibility for the care of that child to another local authority in UK under the powers conferred by section 69 to 72 of the 2016 Act.

This means that a child in the scope of the duty to remove can be transferred from one local authority to another under the NTS.

131 This clause is necessary so that changes to apply inadmissibility to children in the scope of the scheme do not prevent a local authority to local authority transfer of those children who may not be captured by the current definitions of "relevant child". Section 69(10) of the 2016 Act enables the Secretary of State to make regulations about the meaning of "unaccompanied" for the purposes of the definition of a relevant child in section 69(9); subsection (3) of the clause amends section 69(10) so that such regulations are confined to the definitions in section 69(9)(a) to (c) – new section 69(9)(d) draws on the definition of "unaccompanied child" in clause 3 of the Bill.

132 The policy intention is this clause allows the legal framework with respect to the NTS to continue to work effectively when a child is an unaccompanied child but is not considered to be an unaccompanied asylum-seeking child once their claim is deemed to be inadmissible.

## Clause 21: Provisions relating to removal and leave

133 The Council of Europe Convention on Action against Trafficking in Human Beings ("ECAT") provides that once there are reasonable grounds to believe that a person is a victim of trafficking, states have certain obligations to that person (such person being a "potential victim"). Part 5 of the 2022 Act, which came into force on 30 January 2023, placed a number of the provisions of ECAT into domestic law. Section 61 of the 2022 Act provides for a minimum 30-day recovery and reflection period for potential victims of modern slavery during which, subject to section 63, the victim must not be removed from the UK; section 62 provides that only one recovery period will be provided to a potential victim, unless the Secretary of State considers it appropriate to provide a further period of protection from removal in the particular circumstances of the case, or unless the further instance of exploitation occurred after the previous reasonable grounds decision; section 63 sets out disqualifications to providing a recovery period, support or temporary leave to a potential victim of modern slavery based on grounds that the individual is a threat to public order or has claimed to be a victim in bad faith; section 64 (which inserts section 50A into the 2015 Act) sets out obligations to provide potential victims with assistance and support to aid their recovery during the recovery period; and section 65 sets out the circumstances in which the Secretary of State must grant temporary, limited leave to remain to confirmed victims of modern slavery.

134 The public order disqualification may currently be applied to the category of persons listed in section 63(3), including certain foreign national offenders. This clause extends the operation of the public order disqualification such that the consequences listed in section 63(2) of the 2022 Act also apply to persons within the scheme provided for in this Bill, subject to the qualifications outlined below.

135 Subsection (1) provides that the public order disqualification provided for in subsection (2) automatically applies to an illegal migrant if the Secretary of State is required under Clause 2(1) to make arrangements for their removal from the UK, and a decision (known as a reasonable grounds decision) has been made by the relevant Home Office competent authority that they are a potential victim of modern slavery. In reaching such a decision, a competent authority will apply the statutory guidance issued under section 49 of the 2015 Act. The application of the public order disqualification to such persons is based on a number of factors including the pressure placed on public services, the large number of irregular arrivals and the loss of life caused by arrivals from illegal and dangerous journeys, including via small boat Channel crossings.

136 Subsections (2) and (3) provides for an a exception to the automatic application of the public order disqualification, namely where the Secretary of State is satisfied that a person is

cooperating with a public authority (this is not limited to a police investigation but in practice is most likely the National Crime Agency, a police force and/or the Crown Prosecution Service (or equivalent in Scotland and Northern Ireland)) in connection with an investigation or criminal proceedings in respect of the conduct or alleged conduct resulting in the positive reasonable grounds decision or which was relevant to any subsequent conclusive grounds decision. In order for the exception to apply, the Secretary of State must consider it necessary for that person to be present in the UK to provide that cooperation and must consider the public interest in the person providing that cooperation to outweigh any significant risk of serious harm to members of the public posed by that person.

137 Subsection (2) sets out two of the effects of applying the public order disqualification to such persons, namely to disapply:

- any prohibition (contained in section 61 or 62 of the 2022 Act) on removing a potential victim from the UK; and
- any requirement (imposed by section 65 of the 2022 Act) to grant limited leave to remain to a confirmed victim.

138 Subsection (4) sets out that a person cooperating with a public authority in connection with an investigation or criminal proceedings is a refence to them doing so to the extent that is reasonable having regard to the person's circumstances. Subsection (4) also defines "the relevant exploitation" set out in subsection 3 as meaning the conduct or alleged conduct resulting in the positive reasonable grounds decision, and (ii) where a positive conclusive grounds decision has also been made in relation to the person, any other conduct resulting in that decision.

139 Subsection (5) sets out that for the purposes of the exception to disqualification on the basis of the person's cooperation with an investigation, the Secretary of State must assume that it is not necessary for the person to be present in the United Kingdom to provide the cooperation in question. This presumption applies unless the Secretary of State considers that there are compelling circumstances which require the person to be present in the United Kingdom for that purpose.

140 In determining whether there are compelling circumstances), the Secretary of State must have regard to guidance.

141 Subsection (6) provides for an exception to subsection (2) where:

a. Subsection (2) would apply to a child but subsection (3) applies that child's parent or an individual who lives in the same household or has care of that child;

b. Subsection (2) applies to a parent of a child or an individual who lives in the same household as the child and has sole responsibility for them and subsection (3) applies to that child.

142 Clauses 21 to 23 deal with a third consequence of applying the public order disqualification, namely the disapplication of any obligations to provide assistance and support during the recovery period.

143 Subsection (7) to (9) provides that the Secretary of State may revoke limited leave to remain granted under section 65(2) of the 2022 Act to a person falling within subsection (7). Section 65(2) of the 2022 Act provides that the Secretary of State must grant limited leave to remain to a person if it is considered necessary for the purposes of (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. Unless the exception at sub-section (3) or (6) applies, a person falls within subsection (7) if they would otherwise be subject to the duty to make removal arrangements under Clause 2(1) save for the fact that they had been granted limited leave under section 65(2) of the 2022 Act on or after 7 March 2023 (that is, the day the Bill was introduced in the House of Commons).

144 Subsection (10) defines terms used in this clause. The terms "victim of slavery" and "victim of human trafficking" take their meaning from the Slavery and Human Trafficking (Definition of Victim) Regulations 2022 (SI 2022/877).

## Clause 22: Provisions relating to support: England and Wales

145 This clause deals with the third consequence of applying the public order disqualification to illegal entrants in respect of whom the Secretary of State is under a duty to make removal arrangements under Clause 2(1). Where such a person has received a positive reasonable grounds decision that they are a potential victim of modern slavery and the exception in Clause 21(3) does not apply (that is, they are not cooperating with an investigation , as summarised above), subsection (2) disapplies the duties on the Secretary of State under section 50A of the 2015 Act (which applies to England and Wales) to provide necessary assistance and support to potential victims during the recovery period.

## Clause 23: Provisions relating to support: Scotland

146 This clause makes similar provision to that in Clause 22 such as to disapply certain modern slavery provisions relating to support in Scotland to persons in respect of whom the Secretary of State is under the duty to make removal arrangements in Clause 2(1), are in receipt of a positive reasonable grounds decision and who are not cooperating with a public authority in connection with an investigation or criminal proceedings in respect of the conduct or alleged conduct relevant to the reasonable grounds decision or a later conclusive grounds decision. Those provisions are:

- Section 9(1) of the Human Trafficking and Exploitation (Scotland) Act 2015 which provides that where there are reasonable grounds to believe that an adult is a victim of human trafficking, the Scottish Ministers must secure the provision of such support and assistance as is necessary given the adult's needs, for the relevant period (that is the period between a reasonable grounds decision and a conclusive grounds determination).

- Section 9(3) of the Human Trafficking and Exploitation (Scotland) Act 2015 which confers discretion on the Scottish Ministers to provide support and assistance out with the mandatory period under section 9(2).

- Section 10(1) of the Human Trafficking and Exploitation (Scotland) Act 2015 which enables the Scottish Ministers to make regulations about the provision of support to adult victims of the offence of slavery, servitude and forced or compulsory labour.

147 Subsection (8) enables the Secretary of State, by regulations (subject to the affirmative procedure), to amend this clause consequential on regulations made by Scottish Ministers under powers conferred by sections 9(8) or 10(1) of the Human Trafficking and Exploitation (Scotland) Act 2015.

## Clause 24: Provisions relating to support: Northern Ireland

148 This clause makes similar provision to that in Clauses 22 and 23 such as to disapply certain modern slavery provisions relating to support in Northern Ireland to persons in respect of whom the Secretary of State is under a duty to make removal arrangements under Clause 2(1), are in receipt of a positive reasonable grounds decision and who are not cooperating with a public authority in connection with an investigation or criminal proceedings in respect of the conduct or alleged conduct relevant to the reasonable grounds decision or a later conclusive grounds decision. Those provisions are:

- Section 18 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 which places a duty on the Department of Justice to provide assistance and support to adult potential victims of human trafficking in accordance with the provisions of that section.

- Section 18(8) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 which provides a discretionary power to enable the Department of Justice to continue to provide support to potential victims in specific cases where a person is relocated to another jurisdiction on the advice of the Police Service of Northern Ireland.

- Section 18(9) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 which provides a further discretionary power which enables the Department to continue to provide support to a person beyond the point where a conclusive determination is made, where that is considered necessary.

## Clause 25: Suspension and revival of sections 21 to 24

149 This clause allows provisions in Clauses 21 to 24 (other than the regulation-making power in Clause 23(8)) to be suspended if their continuance is no longer justified. It also allows for the provisions to be revived if needed again. The method of achieving suspension and revival is by way of regulations made by the Secretary of State. Subsection (1) provides that the operation of these clauses is automatically suspended two years after commencement. This is subject to the regulation-making power in subsection (3), read with subsections (4) and (5). Under these provisions, regulations may:

a. provide for the operation of a relevant provision to suspended before the time at which its operation would otherwise be suspended (for example, before the end of the initial two-year period provided for in subsection (1));

b. provide for a relevant provision to continue in force for a further period not exceeding 12 months;

c. provide for the previously suspended operation of a relevant provision to be revived for a specified period not exceeding 12 months;

150 Suspension and revival can be done more than once (subsection (6)).

151 Subsection (7) provides that a suspension of a provision should be treated in the same way as a repeal for the purposes of applying the general savings provisions that apply to repeals contained in section 16(1) of the Interpretation Act 1978.

152 Subsection (8) enables the Secretary of State, by regulations, to make other transitional or saving provision (in addition to that provided for by virtue of subsection (7)) in consequence

of the suspension of a relevant provision. Such regulations are not subject to any parliamentary procedure save if combined with regulations made under subsection (3).

153 The provisions in clauses 21 to 24 reflect provision in Article 13(3) of the Council of Europe Convention on Action against Trafficking in Human Beings which provides that State parties to the Convention are not bound to observe the minimum 30-day recovery and reflection period if grounds of public order prevent it or if it is found that victim status is being claimed improperly. The Government considers that it is appropriate to apply the public order disqualification to illegal entrants in respect of whom the Secretary of State is required to make arrangements for removal under clause 1, on the basis that it is in the interests of the protection of public order in the UK including to prevent persons from evading immigration controls in this country, to reduce or remove incentives for unsafe practices or irregular entry, and to reduce the pressure on public services caused in particular by illegal entry into the UK. The government recognises, however, that the application of the public order disqualification to this cohort of illegal entrants (subject to the limited exception where a person is cooperating with law enforcement agencies in the investigation or prosecution of an offence relating to the circumstances of their modern slavery or human trafficking) is a significant step and only justified during such time as the exceptional circumstances relating to illegal entry into the UK including by persons crossing the Channel in small boats continues to apply (see paragraphs 3 and 9-14). Accordingly, it is considered appropriate for the continued necessity for these provisions to be kept under review and, when appropriate, for them to be suspended in accordance with the provisions of this clause, with power to revive, if circumstances were to again change.

## Clause 26: Procedure for certain regulations under section 25

154 This clause makes provision for the parliamentary procedure in respect of regulations made under Clause 23(3)(c) – Clause 54 provides for the parliamentary procedure for regulations made under Clause 23(3)(a) and (b) and (8). Regulations made under Clause 23(3)(c) are generally subject to the draft affirmative procedure (subsection (1)), but subsections (2) to (5) provide for the made affirmative procedure to apply in cases of urgency, for example in response to an increase in small boat arrivals over the parliamentary summer recess.

## Clause 27: Amendments relating to sections 21 to 24

155 Subsection (1) inserts new subsection (5A) into section 50A of the 2015 Act; that section places a duty on the Secretary of State to secure the provision of any necessary assistance and support to potential victims of modern slavery during the recovery period. New subsection (5A) acts as a signpost to make it clear that this duty is subject to the operation of the public order disqualification provided for in Clause 22.

156 Subsection (3) inserts new subsection (10) into section 9 of the Human Trafficking and Exploitation (Scotland) Act 2015. That section places a duty on the Scottish Ministers to secure the provision of support and assistance for adult victims of human trafficking, on an assessment of needs, during a defined period. New subsection (10) acts as a signpost to make it clear that this duty is subject to the operation of the public order disqualification provided for in Clause 23.

157 Subsection (4) inserts new subsection (3) into section 10 of the Human Trafficking and Exploitation (Scotland) Act 2015. That section enables the Scottish Ministers to make regulations about the provision of support to adult victims of the offence of slavery, servitude and forced or compulsory labour. New subsection (4) acts as a signpost to make it clear that this power is subject to the operation of the public order disqualification provided for in Clause 23.

158 Subsection (5) inserts new subsection (10A) into section 18 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 which

places a duty on the Department of Justice to provide assistance and support to adult potential victims of human trafficking in accordance with the provisions of that section. New subsection (10A) acts as a signpost to make it clear that this duty is subject to the operation of the public order disqualification provided for in Clause 24.

159 Subjection (7) amends section 61(2) of the 2022 Act to provide that the prohibition on the removal of a potential victim of modern slavery during the recovery period is subject to the operation of the public order disqualification provided for in Clause 21 (in the same way as the prohibition is already disapplied in cases where the public order disqualification provided for in section 63(2) of the 2022 Act applies).

160 Subsection (8) amends section 62(2) of the 2022 Act to provide that the discretion conferred on a competent authority to protect a potential victim from removal from the UK during any additional 30-day recovery period or until a further conclusive grounds decision is made, if later, is subject to the operation of the public order disqualification provided for in Clause 21 (in the same way as the discretion is already disapplied in cases where the public order disqualification provided for in section 63(2) of the 2022 Act applies).

161 Subsection (9) inserts new subsection (8) into section 63 of the 2022 Act. New subsection (8) acts as a signpost to make it clear that the public order disqualification provided for in section 63 is augmented by the public order disqualification provided for in Clause 21.

162 Subsection (11) amends section 65(3) of the 2022 Act to provide that the duty on the Secretary of State to grant temporary, limited leave to remain to confirmed victims of modern slavery in specified circumstances, is subject to the operation of the public order disqualification provided for in Clause 21 (in the same way as the duty is already disapplied in cases where the public order disqualification provided for in section 63(2) of the 2022 Act applies).

163 Subsection (12) inserts new subsection (8A) tonto section 65 of the 2022 Act. New subsection (8A) acts as a signpost to make it clear that Clause 21(8) and (9) also makes provision for the revocation of leave to remain granted under section 65(2).

## Clause 28: Disapplication of modern slavery provisions

164 This clause amends section 63 of the 2022 Act which sets out disqualifications to providing a recovery period to a potential victim of modern slavery based on grounds that the person is a threat to public order or has claimed to be a victim in bad faith.

165 Section 63(3) sets out categories of person who are considered to be a threat to public order. Subsection (1) adds two further categories to that list, namely: persons liable to deportation from the UK under section 3(5) or (6) of the 1971 Act on grounds of it being conducive to the public good or as a result of deportation of a family member or a recommendation following conviction; and liable to deportation under any other enactment that provides for such deportation.

## Clause 29: Entry into and settlement in the United Kingdom

166 This clause provides for illegal migrants who have ever satisfied the conditions in Clause 2 to be barred from securing limited leave to remain, settlement and lawful re-entry into the UK following their removal, subject to certain exceptions. In line with the second condition in Clause 2 the bar will apply to persons illegally entering or arriving in the UK on or after 7 March 2023, that is the date the Bill was introduced in the House of Commons.

167 Subsection (2) amends section 8 of the 1971 Act. The 1971 Act provides that, subject to certain exceptions, a person who is not a British citizen requires leave (that is permission) to enter and remain in the UK. Section 8(1) of the 1971 Act provides for one such exception, namely a crew member of a ship or aircraft. Crew members may not enter without leave in three

circumstances (as set out in section 8(1)(a) to (c)), namely where the person has been the subject of a deportation order, where that have at any time been refused leave to enter the UK and have not subsequently been given leave to enter or remain in the UK, and where an immigration officer requires them to submit to examination under Schedule 2 to the 1971 Act. This subsection introduces a fourth case where crew members may not enter without leave (as set out in new section 8(1)(d) of the 1971 Act). if they have ever met the four conditions in Clause 2 of the Bill.

168 Subsection (3) inserts new section 8AA into the 1971 Act.

a. New section 8AA(2) provides that, subject to new sections 8AA(3) to (5), an illegal migrant who has ever met the four conditions in Clause 2 of the Bill must not be given entry clearance, an Electronic Travel Authorisation or leave to enter or remain in the UK, other than bridging leave given under the Immigration Rules to an unaccompanied child falling within Clause 3(1) of the Bill, or limited leave given under section 65 of the Nationality and Borders Act 2022 as it applies under this Bill.

b. New section 8AA(3) sets out the grounds on which the Secretary of State may temporarily waive the bar on re-entry to grant limited leave to enter, entry clearance or an Electronic Travel Authorisation. The waiver may be applied where the failure to grant such leave, entry clearance or Electronic Travel Authorisation would contravene the UK's obligations under the ECHR, or where there are other exceptional circumstances which mean it is appropriate to grant such leave. The power to waive the bar on re-entry in other exceptional circumstances includes, but is not limited to, where it is necessary to comply with the UK's international obligations.

c. Similarly, new section 8AA(4) sets out the grounds on which the Secretary of State may temporarily waive the bar to grant limited leave to remain in the UK. A waiver of the bar may be applied where it is necessary to comply with the UK's international legal obligations, such as the ECHR or under certain maritime or aviation conventions, where a member of crew, particularly seafarers, seeks entry for urgent medical treatment or for welfare purposes. A waiver may also be applied where other exceptional circumstances mean it is appropriate to grant an individual limited leave to remain where limited leave to enter, entry clearance or an Electronic Travel Authorisation has been given under section 8AA(3).

d. Under both sections 8AA(3) and (4), the waivers may be applied, for example, where a person having been removed to a safe third country successfully challenges their removal by way of judicial review on ECHR grounds. Such a person will be allowed to return to the UK and be granted limited leave to enter and limited leave to remain.

e. New section 8AA(5) provides that the Secretary of State may grant indefinite leave to remain if the Secretary of State considers that giving such leave is necessary in order to comply with the United Kingdom's obligations under the ECHR.

## Clause 30: Persons prevented from obtaining British citizenship etc

169 This clause sets out which people will not be eligible for British citizenship, British overseas territories citizenship, British overseas citizenship and British subject status because they have entered the UK, the Islands, or an overseas territory unlawfully. It defines who is an "ineligible person" and so will not be able to apply under the provisions of the 1981 Act specified in Clauses 31 to 34.

170 Subsection (3) provides that a person will not be eligible if they have ever met the four conditions in Clause 1 of the Bill.

171 Subsection (4) provides that a child born in the UK, the Islands or an overseas territory on or after 7 March 2023 (the date of introduction of the Bill), will not be eligible if either of their parents has ever met the four conditions at Clause 2.

172 Subsections (5) to (7) allow references to the UK in this clause to be read as references to the Islands and British overseas territories. British citizenship can be acquired through a connection with the Islands, in the same way as in the UK, and through birth in an overseas territory. There are parallel provisions for British overseas territories citizenship to be acquired through a connection with an overseas territory, and a person holding British overseas territories citizenship alone is able to register as a British citizen. References to immigration provisions in Clause 1 are therefore to be read as if they included immigration provisions in the Islands, and equivalent immigration provisions in the territories.

173 Subsection (8) states that that a parent for the purpose of this clause will be defined in the same way as for the rest of the 1981 Act (see section 50(9A) of that Act).

## Clause 31: British citizenship

174 This clause provided that ineligible persons will not be able to register or naturalise as a British citizen under the specified provisions.

175 Subsection (1) provides that an ineligible person will not be entitled to register as a British citizen under the following sections of the 1981 Act:

- Section 1(3) - registration of child born in the UK whose parent has become a British citizen or settled in the UK.
- Section 1(4) - registration of a person born in the UK who lived there for the first ten years of their life.
- Section 3(2) – registration of a child under 18 where one of the parents is a British citizen "by descent" and lived in the UK for a period of 3 years at any time before the birth.
- Section 3(5) - registration of a child under 18 where one of the parents is a British citizen "by descent" and the family have lived in the UK for the period of 3 years prior to the application.
- Section 4(2) - registration of British nationals. British nationals who have lived for a period of five years in the UK are able to register if they meet residence and good character requirements.
- Section 5 – registration of a British overseas territories citizen with a connection with Gibraltar.
- Sections 10(1) and 13(1) - registration routes for "resumption of citizenship" following renunciation.

176 Subsection (2) provides that the Home Secretary may not register or naturalise an ineligible person as a British citizen under the following sections of the 1981 Act:

- Section 3(1) – registration of a child under 18 at the Home Secretary's discretion, provided they are of good character. (Published guidance sets out when discretion will normally be exercised.)

- Section 4A - registration of a British overseas territories citizen as a British citizen, at the Home Secretary's discretion.
- Section 6 - naturalisation as a British citizen, based on a period of residence in the UK – three years for spouses and civil partners of British citizens, five years for others.
- Sections 10(2) and 13(3) - registration routes for "resumption of citizenship" following renunciation, at the Home Secretary's discretion.

## Clause 32: British overseas territories citizenship

177 British overseas territories citizens are people connected with one of the UK's 14 overseas territories (for a list of these, see the glossary at annex A). Many British overseas territories citizens are also British citizens, by virtue of the British Overseas Territories Act 2002. Foreign nationals are able to register or naturalise as a British overseas territories citizen if they meet the requirements, and can then apply to register as a British citizen.

178 This clause prevents ineligible persons people acquiring British overseas territories citizenship under routes which mirror the above routes for British citizenship.

179 Subsection (1) provides that an ineligible person will not be entitled to register as a British overseas territories citizen under the following sections of the 1981 Act:

- Section 15(3) - registration of child born in an overseas territory whose parent has become a British overseas territories citizen or settled in the territory.
- Section 15(4) - registration of a person born in an overseas territory who lived there for the first ten years of their life.
- Section 17(2) – registration of a child under 18 where one of the parents is a British overseas territories citizen "by descent" and lived in the UK for a period of 3 years at any time before the birth.
- Section 17(5) - registration of a child under 18 where one of the parents is a British overseas territories citizen "by descent" and the family have lived in the UK for the period of 3 years prior to the application.
- Sections 22(1) and 13(1) - registration routes for "resumption of citizenship" following renunciation.

180 Subsection (2) provides that the Home Secretary may not register or naturalise an ineligible person as a British overseas territories citizen under the following sections of the 1981 Act:

- Section 17(1) – registration of a child under 18 at the Home Secretary's discretion, provided they are of good character.
- Section 18 - naturalisation as a British overseas territories citizen, based on a period of residence in the UK – three years for spouses and civil partners of British citizens, five years for others.
- Sections 22(2) and 13(3) - registration routes for "resumption of citizenship" following renunciation, at the Home Secretary's discretion.

## Clause 33: British overseas citizenship

181 British overseas citizens are mainly people who were citizens of the UK and Colonies before the 1981 Act came into force, but who did not become British citizens or British dependent territories citizens (now British overseas territories citizens). The status can only now be acquired by registration; section 27(1) of the 1981 Act allows for a child to be registered as a British overseas citizen at the Home Secretary's discretion. Published guidance sets out when that discretion would normally be used.

182 This clause provides that an ineligible person shall not be registered as a British overseas citizen under section 27(1) of the 1981 Act.

## Clause 34: British subjects

183 Those who became British subjects under the the 1981Act are mainly people with a connection with Ireland, or people connected to the former British India who have not acquired any alternative citizenship. Some British subjects (mainly those linked to Ireland) have the right of abode in the UK; most do not. Section 32 of the 1981 Act allows for a child to be registered as a British subject at the Home Secretary's discretion. Published guidance sets out when that discretion would normally be used.

184 This clause provides that an ineligible person shall not be registered as a British subject under section 32 of the 1981Act.

## Clause 35: Disapplication of sections 31 to 34

185 This clause allows the Secretary of State to determine that a person is not "ineligible" for registration or naturalisation, as set out in Clauses 31 to 34, if they consider that applying those sections would contravene the UK's obligations under the ECHR.

## Clause 36: Amendments relating to sections 31 to 34

186 This clause amends the relevant provisions of the 1981 Act (as listed above), by adding that they are subject to sections 1, 2 and 6 of the Illegal Migration Act.

## Clause 37: Suspensive claims: interpretation

187 This clause defines terms for the purposes of Clauses 37 to 51 which set out limited circumstances in which legal proceedings relating to the removal of a person falling, or purportedly falling, within Clause 2 of the Bill, have the effect of suspending that person's removal. All other legal proceedings not addressed in these clauses will be non-suspensive (see Clause 4(1)(d)).

188 There are two kinds of claim that would defer removal under Clause 5, a "factual suspensive claim" or a "serious harm suspensive claim" (known collectively as a "suspensive claim").

189 Subsection (3) defines a "factual suspensive claim". Such a claim arises where a person issued with a removal notice under Clause 7(3)(b) asserts that they do not meet the removal conditions (the four conditions in Clause 2) and are therefore not liable to removal under Clause 5.

## Clause 38: Serious harm suspensive claims: interpretation

190 Subsection (3) defines a "serious harm suspensive claim". Such a claim arises where a person would face a real, imminent and foreseeable risk of serious and irreversible harm were they to be removed to the country or territory specified in the removal notice given under Clause 7(3)(b). The harm must arise before the substantive human rights claim has been decided by the Secretary of State or any application for judicial review is exhausted. The "real, imminent and foreseeable risk of serious and irreversible harm" test reflects that applied by the

European Court of Human Rights when considering whether to grant interim measures (in effect an injunction) under Rule 39 of its Rules of Court (see factsheet here). "Serious" indicates that the harm must meet a minimum level of severity, and "irreversible" means that the harm would have a permanent or very long-lasting effect.

191 Subsections (4) and (5) provide a non-exhaustive list of examples of what does and does not constitute serious and irreversible harm for the purposes of the Act. Subsections (6) and (7) provide an example of what is unlikely to constitute serious and irreversible harm for the purposes of the Act. Subsection (8) defines persecution for the purposes of subsections (4) and (5).

192 Subsection (9) defines relevant period used in this clause.

193 This clause provides for the Secretary of State to make regulations to amend the meaning of "serious and irreversible harm".

## Clause 39: Meaning of "serious and irreversible harm"

194 This clause enables the Secretary of State, by regulations subject to the affirmative procedure), to make provision about the meaning of "serious and irreversible harm" for the purposes of this Bill.

## Clause 40: Relationship with other proceedings

195 This clause sets out the relationship between serious harm suspensive claims and human rights claims and provides that a serious harm suspensive claim is not a human rights claim, and, therefore, any refusal of a serious harm suspensive claim will not attract a right of appeal under section 82(1)(a) or (b) of the 2002 Act (subsections (1) and (2)).

196 The raising of a serious harm suspensive claim does not prevent a person from raising a human rights claim in relation to their removal from the UK to a third country under this Bill. The refusal of a human rights claim will not attract a right of appeal under section 82(1)(a) or (b) of the 2002 Act, but it would be open to the claimant to seek a judicial review of the decision (subsections (4) and (5)). Subsection (6) makes a consequential amendment to subsection (3) of section 82 of the 2002 Act to disapply the rights of appeal provided for in that section.

## Clause 41: Serious harm suspensive claims

197 This clause sets out the process for the submission and determination of serious harm suspensive claims. The clause provides for time limits for the submission of claims and their determination to ensure that the process operates expeditiously so as not to unduly delay removal in cases where a claim is not made out.

198 Subsections (1) and (5) set out the requirements for making a valid serious harm suspensive claim. Those requirements are:

- the claim is made within the claim period (as defined in subsection (7)), unless the claim period is extended as provided for in subsection (6);
- the claim contains compelling evidence that the serious harm condition is met, that is that the person would face a real, imminent and foreseeable risk of serious and irreversible harm and that the harm would arise before the substantive human rights claim has been decided by the Secretary of State or any application for judicial review is exhausted (see definition of "relevant period" in Clause 37(9));

- the claim contains the prescribed information; and
- the claim is made in the prescribed form and manner.

199 The claim must be made within 7 days following receipt of the notice ('claim period') and the Secretary of State must make a decision within 3 days following receipt of the claim ('decision period'), unless the decision period is extended under subsection (6). In coming to a decision, the Secretary of State must take into account the factors listed in subsection (4). Where the Secretary of State concludes that the claimant would face a real, imminent and foreseeable risk of serious and irreversible harm if removed to the country or territory specified in the removal notice, they will not be removed to that country or territory (see Clause 45(2)). Where the Secretary of State concludes that the person would not, before the Secretary of State's decision or conclusion of a judicial review in relation to a human rights claim, face a real, imminent and foreseeable risk of serious and irreversible harm, the Secretary of State may also certify the claim as clearly unfounded (subsection (3)).

200 The refusal of a claim or the certification of a claim as clearly unfounded does not give rise to an appeal under section 82(1)(a) or (b) of the 2002 Act (see Clause 39(2)), instead provision for appeals is made in Clause 42 below.

## Clause 42: Factual suspensive claims

201 This clause sets out the process for the submission and determination of factual suspensive claims. The clause again provides for time limits for the submission of claims and their determination to ensure that the process operates expeditiously so as not to unduly delay removal in cases where a claim is not made out.

202 Subsections (1) and (5) set out the requirements for making a valid factual suspensive claim. Those requirements are:

- the claim is made within the claim period (as defined in subsection (7)), unless the claim period is extended as provided for in subsection (6);
- the claim contains compelling evidence that the Secretary of State or an immigration officer made a factual mistake in deciding that the person met the removal conditions, for example, the Secretary of State mistakenly concluded that the person entered the UK without leave;
- the claim contains the prescribed information; and
- the claim is made in the prescribed form and manner.

203 The claim must be made within 7 days following receipt of the notice ('claim period') and the Secretary of State must make a decision within 3 days following receipt of the claim ('decision period'), unless the decision period is extended under subsection (6). Where the Secretary of State concludes that a mistake of fact was made in deciding whether the claimant satisfied the removal conditions, the duty to remove will not apply and the person will not be removed from the UK under the provisions of this Bill. It may be, for example, that the Secretary of State is satisfied that the claimant met the first, third and fourth conditions in Clause 2, but on further examination it was found that they had entered the UK before 7 March 2023 and therefore did not satisfy the second condition; in such a case other enforcement action would be appropriate. Where the Secretary of State concludes that a mistake of fact was not made, the Secretary of State may also certify the claim as clearly unfounded (subsection (3)).

## Clause 43: Appeals in relation to suspensive claims

204 This clause provides for an appeal to the Upper Tribunal where the Secretary of State has refused a suspensive claim and has not certified the claim as clearly unfounded (subsections (1) and (2)).

205 Subsection (3) sets out the grounds, and only grounds, on which an appeal may be brought.

206 In considering an appeal against the refusal of a serious harm suspensive claim, the Upper Tribunal must take into account the same factors that the Secretary of State is required to take into account when considering the claim (see Clause 40(4)).

207 Subsection (6) sets out the matters that the Upper Tribunal must decide when considering an appeal under this clause. In effect, the Upper Tribunal is considering a suspensive claim on its merits and coming to its own view on whether the test for allowing a claim has been met.

208 Subsection (7) provides that the only right of appeal against Upper Tribunal decisions is to the Court of Appeal in England and Wales or Northern Ireland or the Court of Session in Scotland (as provided for in section 13 of the Tribunals, Courts and Enforcement Act 2007).

## Clause 44: Permission to appeal in relation to suspensive claims certified as clearly unfounded

209 This clause makes provision for permission to appeal against a decision by the Secretary of State to certify a suspensive claim as clearly unfounded. Where the Secretary of State has rejected a suspensive claim and certified the claim as clearly unfounded, there is no automatic right of appeal against the refusal of the claim, instead a person may apply to the Upper Tribunal for permission to appeal the substantive decision (subsection (2)).

210 Subsection (3) sets out the test to be applied by the Upper Tribunal when considering an application for permission to appeal in relation to a serious harm suspensive claim. The test is higher than that, in Clause 43(6)(a), applied by the Upper Tribunal when considering an appeal against the refusal of a claim which has not been certified as clearly unfounded. If it is to grant permission to appeal, the Upper Tribunal must consider whether there is compelling evidence that the person would, within the relevant period, face an obvious and real, imminent and foreseeable risk of serious and irreversible harm if removed to the safe third country specified in the removal notice.

211 The threshold for granting permission to appeal the refusal of a factual suspensive claim that has been certified as clearly unfounded is also higher than that for granting an appeal against the refusal of a factual suspensive claim that has not been so certified. The Upper Tribunal may only grant permission to appeal where it considers that there is compelling evidence that the Secretary of State or an immigration officer made a factual mistake in deciding that the person met the removal conditions (subsection (4)).

212 Applications for permission to appeal under this clause must be determined by the Upper Tribunal on the basis of written submissions and evidence, unless the Upper Tribunal considers oral submissions are necessary to secure that justice is done in a particular case (subsection (5)).

213 Where the Upper Tribunal grants permission to appeal it will then go on to consider the substantive appeal against the Secretary of State's decision to refuse a suspensive claim (subsection (6)).

214 Subsection (7) provides that the right of appeal to the Court of Appeal in England and Wales or Northern Ireland or the Court of Session in Scotland against Upper Tribunal decisions (as provided for in section 13 of the Tribunals, Courts and Enforcement Act 2007) does not apply

to decisions of the Tribunal on an appeal against the refusal to grant an application for permission to appeal a suspensive claim.

## Clause 45: Suspensive claims out of time

215 Clauses 41 and 42 require suspensive claims to be submitted within 7 days. This clause makes provision in respect of out-of-time suspensive claims made before a person's removal from the UK, where the person has not previously made a suspensive claim.

216 On receipt of an out-of-time suspensive claim, subsection (2) requires that the Secretary of State must consider whether there were compelling reasons for the out-of-time claim, for example, because they were seriously ill. The Secretary of State must make a decision within 3 days, unless the period is extended under the power conferred by subsection (9).

217 If, as a result of such consideration, the Secretary of State concludes that there were compelling reasons for the out-of-time claim, the Secretary of State must then come to a decision on the claim itself (subsection (3)).

218 Subsection (4) provides for a review by the Upper Tribunal of the Secretary of State's decision that there were no compelling reasons for the out-of-time claim. Where a person applies for a declaration from the Upper Tribunal and the Upper Tribunal concludes that there were compelling reasons for the out-of-time claim, the Upper Tribunal is required to make a declaration that there were compelling reasons for the out-of-time claim. The Upper Tribunal is not required to consider the substance of the claim at this stage, instead the effect of such a declaration is to require the Secretary of State to consider the substance of the out-of-time claim (subsection (6)).

219 Applications for a declaration under subsection (4) must be determined by the Upper Tribunal on the basis of written submissions and evidence; it is therefore not open to the Upper Tribunal to consider oral submissions (subsection (5)(b)).

220 A decision of the Upper Tribunal not to make a declaration under subsection (4) is not subject to appeal to the Court of Appeal in England and Wales or Northern Ireland or the Court of Session in Scotland as provided for in section 13 of the Tribunals, Courts and Enforcement Act 2007 (subsection (7)).

## Clause 46: Suspensive claims: duty to remove

221 This clause deals with the consequences of a person making a suspensive claim.

222 Subsection (2) suspends the removal of a person to the country or territory specified in the removal notice issued to that person in the following circumstances:

- where a person has made an in time suspensive claim, removal is suspended until the Secretary of State has made a decision on the claim;
- where a person has made an out-of-time suspensive claim, removal is suspended until the Secretary of State has made a decision on whether there were compelling reasons for an out-of-time claim and further suspended if the Secretary of State decides there were compelling reasons for an out-of-time claim pending a decision on the substantive claim;
- where a person has made an out-of-time suspensive claim and the Secretary of State considers there were no compelling reasons for an out-of-time claim, removal is suspended until either the person has applied to the Upper Tribunal for a declaration

that there were compelling reasons for an out-of-time claim or the period for making such an application has expired;

- where a person has made an out-of-time suspensive claim and the Secretary of State considers there were compelling reasons for an out-of-time claim or the Upper Tribunal grants an application under Clause 45(4) requiring the Secretary of State to consider the out of time claim, removal is suspended until the Secretary of State has considered the claim;

- where the Secretary of State has refused a suspensive claim and has not certified the claim as clearly unfounded, removal is suspended until any appeal is determined or the time for lodging an appeal has expired.

223 The bar on removal also applies where the Secretary of State agrees with the claim that the person would be at real, imminent and foreseeable risk of serious and irreversible harm if removed before the appeals process is exhausted or agrees that a factual mistake was made in deciding the person satisfied the removal conditions, as the case may be (subsection (2)).

224 In such a case, subsection (3) provides that it would be open to the Secretary of State to revise the decision at a later date if there was a change of circumstances and, if appropriate, issue a further removal notice (for example, in a case where the risk of serious and irreversible harm related to a medical condition which no longer applied or where evidence comes to light that the leave to enter on which the claimant relied to demonstrate that the first condition in Clause 2 did not apply was obtained by deception). Subsection (4) provides a reference to a change of circumstances includes where a person's human rights claim or application for judicial review in relation to their removal from the United Kingdom is not successful, which applies UK-wide.

225 Subsection (5) provides that where the Secretary rejects a suspensive claim, the person may be removed from the UK but only after the appeal process in Clause 43 or 44 has been exhausted.

## Clause 47: Upper Tribunal consideration of new matters

226 The general expectation is that the Upper Tribunal will determine appeals and applications for permission to appeal on the basis of the information available to the Secretary of State at the time they made the original decision which is the subject of the appeal. This clause makes provision for the consideration by the Upper Tribunal of new matters that were not available to the Secretary of State.

227 Subsections (3) and (5) provide that the Upper Tribunal cannot consider new matters (as defined in subsection (4)) unless the Secretary of State has given their consent or, if the Secretary of State has refused to provide consent, where the Upper Tribunal considers there were compelling reasons for the matter not to have been provided to the Secretary of State before the end of the claim period. The Secretary of State may provide consent where there were compelling reasons for the claimant not to have provided details of the matter before the end of the claim period (subsection (6)).

228 Where the Upper Tribunal considers new matters have been raised, the relevant period for the purpose of considering whether there are compelling reasons (and whether to allow consideration of the new matter) is three working days. This is in addition to the period for considering the appeal or permission to appeal application.

229 A decision of the Upper Tribunal to make or not make a determination under subsection (5) is not subject to appeal to the Court of Appeal in England and Wales or Northern Ireland or the

Court of Session in Scotland as provided for in section 13 of the Tribunals, Courts and Enforcement Act 2007 (subsection (7)).

## Clause 48: Appeals in relation to suspensive claims: timing

230 Subsections (1) to (3) provide that the Tribunal Procedure Committee must introduce procedure rules in the Asylum and Immigration Chamber which set out the time limits for the appeals process. This includes a period of 6 working days for a claimant to submit an appeal or to apply for permission to appeal; a period of 22 working days for the Upper Tribunal to make a decision on an appeal; and a period of 6 working days to determine an application for permission to appeal under Clause 44(2) or 45(2)).

231 Subsection (4) provides that the Upper Tribunal may extend the prescribed time limits where it is the only way to secure that justice is done in a particular case.

## Clause 49: Finality of certain decisions by the Upper Tribunal

232 Subsection (2) makes certain decisions of the Upper Tribunal final, and stipulates that they are not subject to review by any other court. The relevant decisions are those in relation to applications:

- for permission to appeal against the refusal of a suspensive claim which has been declared clearly unfounded;
- for a declaration that there were compelling reasons for the claimant to have not made a suspensive claim within the claim period; and
- for a determination that there were compelling reasons for the claimant to have not provided details of a new matter to the Secretary of State before the end of the claim period.

233 Subsection (3) further clarifies the extent of the rule. Subsection (3)(a) provides that, if the Upper Tribunal were to make an error in reaching its decision on permission (or leave) to appeal or the granting of a declaration, this does not mean that the Upper Tribunal has acted beyond its powers. Such decisions will therefore still be caught by the rule. Subsection (3)(b) emphasises the effect of subsection (2) in preventing the making of an application to a court of supervisory jurisdiction (as defined in subsection (5)) about the decision, as the jurisdiction of that court does not extend to these decisions.

234 Subsection (4) provides for specific exceptions to subsections (2) and (3), that is, certain circumstances where a challenge can still be brought against decisions of the Upper Tribunal on applications for permission (or leave) to appeal. This includes where the Upper Tribunal did not have jurisdiction, whether because it did not have before it a valid application under Clause 44(2) 44(4) (subsection (4)(a)), or because the Tribunal itself was not properly constituted to carry out its task (subsection (4)(b)). Subsection (4)(c) covers circumstances where the Upper Tribunal acted in bad faith or in such procedurally defective ways as amounts to fundamental breaches of the principles of natural justice. Fundamental breaches of the principles of natural justice include such things as the decision being affected by bias or corruption. All these scenarios would be very unlikely to arise, but it is important to ensure that such decisions would still be subject to review.

235 Subsection (5) defines "decisions" as including "purported decisions'"; this means that even decisions which might otherwise be regarded as a nullity, are caught by the limitation on judicial review.

## Clause 50: Judges of First-tier Tribunal and Upper Tribunal

236 This clause amends section 5 of the Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act"). Section 5 of the 2007 Act lists judges who are also judges of the Upper Tribunal; paragraph 6 of Schedule 3 to the 2007 Act then provides additional requirements for certain judges to be able to sit as judges of the Upper Tribunal, for example following a request from the Senior President of Tribunals, and with the agreement of the Lord Chief Justice (or Lord President of the Court of Session or Lord Chief Justice of Northern Ireland, as appropriate).

237 This clause adds First-tier Tribunal judges and Employment Tribunal judges to the list in section 5 of the 2007 Act, making them eligible to sit in the Upper Tribunal. The decision on whether to use this deployment power sits with the Senior President of Tribunals.

238 As the Upper Tribunal will be required to deal with most appeals brought under this Bill, it will need additional judicial capacity to deal with an increased caseload. This clause will extend existing flexible deployment powers for the judiciary to manage fluctuations in demand in courts and tribunals, supplementing recruitment of new judges.

## Clause 51: Special Immigration Appeals Commission

239 This clause makes provision for appeals against a decision to refuse a suspensive claim to be heard by the Special Immigration Appeals Commission ("SIAC") rather than the Upper Tribunal where the decision is based on information that should not be disclosed in the public interest. SIAC is an independent judicial tribunal that can hear immigration appeals where the decision is based on sensitive information, for example where information has been provided by the Security Services.

240 Subsection (2) provides for an appeal against a suspensive claim or permission to appeal (in relation to a claim certified as clearly unfounded) to be certified by the Secretary of State where the decision relies on sensitive material that should not be disclosed in (a) the interests of national security; (b) the interests of the relationship between the UK and another country; or (c) the public interest.

241 Subsection (3) provides that where the Secretary of State has certified a decision under subsection (2), any pending appeal or permission to appeal to the Upper Tribunal lapses.

242 Subsection (5) inserts new section 2AA into the Special Immigration Appeals Commission Act 1997 to provide for an appeal to be heard by SIAC where the Secretary of State has certified the decision under subsection (2). In considering an appeal against the refusal of a suspensive claim and the consideration of new matters that were not available to the Secretary of State, SIAC must follow the same approach as the Upper Tribunal as set out in Clauses 43(3) to (6) and 47(2) to (8).

243 Subsection (5) also inserts new section 2AB into the 1997 Act to provide that the Upper Tribunal's determination about whether there are compelling reasons for the claimant to have not provided details of a new matter to the Secretary of State before the end of the claim period is not subject to review by any other court. This follows the same approach as the Upper Tribunal as set out in clause 47. New sections 2AB(3) and (4) further clarifies the extent of the rule and provides for specific exceptions where a challenge can still be brought against a decision. New section 2AB(5) defines decision and supervisory jurisdiction for the purpose of this section.

## Clause 52: Interim remedies

244 This clause restricts the ability of a court to grant an interim remedy that would prevent or delay removal of a person subject to the duty to remove.

245 Subsection (1) provides that subsections (2) and (3) apply to any court proceedings relating to a decision to remove a person from the UK under this Bill.

246 Subsection (3) prevents a court from granting an interim remedy that prevents or delays, or has the effect of preventing or delaying, the removal of a person from the UK.

247 Subsection (4) defines terms used in this clause.

## Clause 53: Interim measures of the European Court of Human Rights

248 This clause sets out how interim measures indicated by the European Court of Human Rights affect the duty in Clause 2 to make arrangements for the removal of a person from the UK.

249 Subsection (2) provides that a Minister of the Crown may, but need not, decide that the duty to remove in section 2(1) does not apply to a person where the European Court of Human Rights has indicated an interim measure in relation to that person.

250 Subsection (3) provides that the decision provided for in subsection (2) must be a personal decision by the Minister of the Crown.

251 Subsection (4) provides that the Minister may have regard to any matter that the Minister considers relevant, including the matters set out in subsection (5), when making a decision under subsection (2). Subsection (5) sets out procedures for indicating an interim measure that may be relevant when considering a decision under subsection (2) including: whether the UK government was given an opportunity to present observations and information before the interim measure was indicated; the form of the decision to indicate the interim measure; whether the European Court of Human Rights will, without undue delay, take account of any representation made by the UK government where reconsideration of the decision to indicate the interim measure has been sought; and the likely duration of the interim measure and the timing of any substantive determination by the European Court of Human Rights.

252 Subsection (6) provides that where the Minister does not make a decision under subsection (2), the person or decision-making authority as set out in subsection (7) may not have regard to the interim measure in the circumstances described in subsection (7).

253 Subsection (7) applies to the Secretary of State or an immigration officer in relation to a decision to remove under Clause 2(1) or Clause 7(2), (4) or (5); the Upper Tribunal when considering an appeal or application for permission to appeal; and a court or tribunal when considering an appeal or application relating to a decision to remove a person from the UK.

254 Subsection (8) provides that no inference is to be drawn about whether a person or decision-making authority set out in subsection (7) would otherwise have been required to have regard to the interim measure.

255 Subsection (9) provides that the Secretary of State or an immigration officer is not required to effect the removal of a person under the Bill pending the Minister's decision under subsection (2).

256 Subsection (10) defines terms used in this clause.

## Clause 54: Legal aid

256 This clause ensures that individuals who receive a removal notice have access to free legal advice in relation to the removal notice. Subsections (2) to (4) amend the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO") to bring these matters into scope. Subsection (5) amends the Civil Legal Aid (Merits Criteria) Regulations 2013 to ensure that recipients of a removal notice do not have to undergo merits testing. Within the existing legal aid scheme, different merits tests are applied to different types of cases, but in summary,

they are legal tests as to whether a particular case should receive legal aid. For example, for funding to be provided for full representation in a judicial review case, the legal aid applicant must be able to show that they have met a "proportionality" test (as defined in regulations) and that the prospects of success of the case are very good, good or moderate, or are borderline or marginal, and meet some other additional criteria. Other forms of merits testing may include a public interest test, a reasonable private paying individual test and cost benefit tests, depending on the type of case. Subsection (5) ensures no such merits tests will be applied in these cases.

257 Subsection (2) amends paragraph 19 of Part 1 of Schedule 1 to LASPO, which provides for civil legal services in judicial review matters. Sub-paragraph (5) of paragraph 19 excludes services in relation to judicial reviews relating to immigration matters where the same, or substantially the same, issues have already been the subject of judicial review or an appeal to a tribunal or court within a period of one year. Subsection (2) disapplies these exclusions for the purposes of a judicial review of a refusal of a human rights claim that arises from Article 2 or 3 of the Human Rights Convention.

258 Subsection (3) amends Part 1 of Schedule 1 LASPO by adding in new paragraph 31C which sets out that civil legal services are made available to recipients of a removal notice. New paragraph 31C (1) stipulates that civil legal services (defined in section 8 of the Legal Aid Sentencing and Punishment of Offenders Act 2012) can be provided to such individuals in relation to the removal notice, including in relation to: a suspensive claim relating to the removal notice; and an application under clause 44(4) of the Bill to the Upper Tribunal for a declaration that there were compelling reasons for the person not to make a claim within the claim period.

259 New paragraph 31C (2) provides for certain exclusions in relation to the new paragraph. New paragraph 31C (3) sets out definitions.

260 Subsection (4) amends Schedule 1, Part 3 of LASPO by adding in a new paragraph 16A to put advocacy in proceedings in the Upper Tribunal under sections 44 to 46 or 48 of the Illegal Migration Act into scope. As such, where there is a right of appeal to the Upper Tribunal relating to a suspensive claim under the Bill, legal aid for advocacy at the Upper Tribunal will be available.

261 Subsection (5) amends the Civil Legal Aid (Merits Criteria) Regulations 2013 to provide that the civil legal services provided to recipients of a removal notice are available without the application of the merits criteria (to assess the merits of their case).

## Clause 55: Decisions relating to a person's age

262 Subsection (1) confirms that this clause applies where a relevant authority (see subsection (6)) decides the age of a person ('P') who meets the four conditions in Clause 2 where the duty to ensure removal applies. The clause applies to decisions on age made by a relevant authority for the purposes of the Bill and / or any other legislation, for example the Children Act 1989.

263 Subsection (2) disapplies the statutory right of appeal under section 54 of the 2022 Act, so that P cannot bring an appeal under section 54 where they fall within the duty to arrange removal under the Bill.

264 Subsection (3) confirms that subsections (4) and (5) apply to judicial reviews challenging decisions within subsections (1) or any decisions where the duty to remove applies.

265 Subsection (4) prescribes that where a challenge to a decision relating to P's age is made, this will not prevent the exercise of any power or duty to arrange P's removal from the UK. Such a

person can still be removed while the application for judicial review is ongoing and this claim can continue out of country.

266 Subsection (5) provides for the basis on which the court can consider a decision relating to a P's age in judicial review proceedings. Subsection (5)(a) states that a court can quash a decision only on the basis that it was wrong in law (for example on the grounds rationality and procedural fairness) and subsection (5)(b) prevents the court from quashing the decision on the basis that it is wrong as a matter of fact.

267 Local authorities conduct age assessments to decide whether or how to exercise their functions under the relevant children's legislation. The Home Office then uses these decisions for immigration purposes. Subsection (7) confirms that this applies to decisions on age made by a local authority on those who fall within the duty to arrange removal (clause 2), including when the decision on age is for the purposes of the local authority's decision on exercising its functions under the relevant children's legislation.

268 Subsection (8) stipulates that this section applies to age decisions which are made after the legislation comes into force.

269 Subsections (9), (10) and (11) amend the 2022 Act to disapply the statutory right of appeal for age assessment decisions.

## Clause 56: Age assessments: power to make provision about refusal to consent to scientific methods

270 Subsection (1) introduces a power to make regulations about the effect of a person (P) refusing to consent to a scientific age assessment, where they do not have reasonable grounds to withhold consent.

271 Subsection (2) sets out examples of what may be included in the regulations.

a. Subsection (2)(a) provides that the regulations could disapply section 52(7) of the 2022 Act so that refusal to consent to scientific methods by (P) would not be taken to damage credibility;

b. Subsection (2)(b) sets out that the regulations may provide for an automatic assumption that person (P) is an adult if they refuse to consent to a scientific age assessment without reasonable grounds to do so. The Secretary of State will not make regulations to this effect until satisfied that the scientific methods in question are sufficiently accurate to mean that applying the automatic assumption in cases of refusal to consent will be compatible with the European Convention on Human Rights (in particular Article 8 (right to private and family life).)

272 Subsection (4) amends Part 4 of the 2022 Act (age assessments)

a. Subsection (4)(a) amends section 52(7) to refer to this clause;

b. Subsection (4)(b) amends section 53 to insert "the circumstances in which a person may be considered to have reasonable grounds for a decision not to consent and" in the existing subsection (1)(a)(iv) which defines the processes to be included in regulations made under section 50 or 51 of that Act.

## Clause 57: Inadmissibility of certain asylum and human rights claims

273 This clause amends section 80A of the 2002 Act which provides that asylum claims (that is a claim by a person that to remove them from the UK would breach the UK's obligations under the Refugee Convention) from EU nationals must generally be declared inadmissible to the UK's asylum system. Inadmissibility procedures allow a State to declare an asylum claim

"inadmissible" when the claim is made by nationals of countries which are deemed safe (section 80A(5) provides a non-exhaustive list of exceptional circumstances), and individuals can be returned to their country of nationality.

274 Subsection (2) amends section 80A such that the inadmissibility provisions apply to human rights claims (that is, a claim by a person that to remove them from the UK would be unlawful under section 6 of the Human Rights Act 1998 which provides that a public authority must not act contrary to the ECHR) as well as asylum claims. Subsection (4) makes a consequential change to the heading of Part 4A of the 2002 Act.

275 Subsection (3) inserts new section 80AA into the 2002 Act. New section 80AA(1) sets out a list of safe States for the purposes of section 80A. Section 80A currently applies to nationals of EU member States, the list set out in new section 80AA(1) additionally includes Albania, Iceland, Liechtenstein, Norway and Switzerland. New section 80AA(2) confers a power, by regulations, to amend the list of States in new section 80AA(1). New section 80AA(3) and (4) set out the test that must be met before a State can be added to the list of safe States. Regulations adding to the list of safe States (or both adding States to and removing States from the list) are subject to the draft affirmative resolution procedure, while regulations which only remove States from the list are subject to the negative resolution procedure (new section 80AA(6) and (7)).

## Clause 58: Cap on number of entrants using safe and legal routes

276 This clause places a duty on the Secretary of State to make regulations (subject to the draft affirmative procedure) specifying an annual number of persons to be admitted to the UK through safe and legal routes. The annual number would only cover those admitted to the UK via a safe and legal route as set out in the regulations. It will not include those on work, family or study routes. Before determining the annual number, the Secretary of State is required to consult representatives of local authorities in the UK and other persons or bodies the Secretary of State considers appropriate (subsection (2)). Such engagement will enable the annual number to be determined having regard to the capacity of local authorities to accommodate and provide integration services for the persons to be accommodated and supported each year. However, in cases of humanitarian emergency the duty to consult does not apply (subsection (3)). The annual number will remain in place until revised by subsequent regulations; as such the annual number may apply for a period of years. Subsection (4) requires the consultation with local authorities and other relevant persons or bodies to commence within three months from Royal Assent.

277 What constitutes safe and legal routes is to be defined in regulations, again subject to the draft affirmative procedure (subsection (6)), reflecting the fact that the existing resettlement schemes are not provided for in legalisation. There are currently existing resettlement routes in the UK, including the Afghan Citizens Resettlement Scheme, the UK Resettlement Scheme, the Mandate Resettlement Scheme and the Community Sponsorship Scheme. The examples given for current safe and legal routes do not mean that these specific routes will be part of the cap, defining the routes and cap figure depends on a number of factors including local authority capacity and the safe and legal routes offered at the time of the regulations.

278 Subsections (4) and (5) require the Secretary of State to lay a statement before Parliament should the number of persons admitted through safe and legal routes in any year exceed the specified number. Such a statement must set out the number of persons admitted and the reason why the specified number was exceeded. A statement must be laid before Parliament within six months of the end of the year to which it relates.

## Clause 59: Report on safe and legal routes

279 This clause places a duty on the Secretary of State to lay a report, within six months of Royal Assent, on safe and legal routes to enter the United Kingdom. While 'safe and legal routes' has not been defined in this clause, this clause operates on the term taking its accepted meaning and inclusion in the report does not indicate that a route will be included in the definition of safe and legal routes for the purposes of the cap.

280 Subsection (1) requires the report to contain details (subsection 2) of current and any proposed additional safe and legal routes which may not yet be in operation. This report must also set out the routes which are available to adults and children and how the routes, either existing or possible future, can be accessed by those who are eligible to use them.

## Clause 60: Credibility of claimant: concealment of information etc

281 This clause amends section 8 of the 2004 Act by adding to the behaviours which should be considered damaging to the credibility of a person who has made an asylum or human rights claim.

282 Subsections (2)(a) and (2)(b) amend subsection (3) of section 8 of the 2004 Act by replacing references to "passport" with "identity document". This makes it clear that credibility should be damaged where a claimant fails to produce, destroys, alters or disposes of any identity document without reasonable explanation, or where a claimant produces a document which is not a valid identity document as if it were.

283 Subsection (2)(c) inserts new paragraph (da) into subsection (3) of section 8 of the 2004 Act. This provides that credibility should be damaged where a claimant refuses to disclose information, such as a passcode, that would enable access to any information stored in electronic form, such as on a mobile phone or other electronic device.

284 Subsection (3) amends section 8 of the 2004 Act definitions for "document" and "identity document". It also removes the definition of "passport".

285 Subsection (4) replaces the reference to "passport" in section 8 of the 2004 Act with "identity document".

## Clause 62: Consequential and minor provision

286 Subsections (1) to (3) confer a power on the Secretary of State, by regulations to make consequential provision for the purposes of the Bill. Such provision may include repealing, revoking or otherwise amending primary and secondary legislation.

287 Subsection (4) adds the Illegal Migration Act 2023 to the list of enactments in section 61(2) of the UK Borders Act 2007 which are collectively referred to as "the Immigration Acts". Amongst the effects of this provision is to apply to the scheme provided for in the Bill the power of immigration officers to use reasonable force when it is necessary in the exercise of a power conferred by the Bill (as provided for in section 146(1) of the Immigration and Asylum Act 1999) and the age assessment provisions in Part 4 of the 2022 Act.

288 Subsection (5) repeals paragraph 8(2) of Schedule 5 to the 2022 Act. Paragraph 8(2) in turn prospectively repeals section 35(3) of the 1999 Act. Section 35 of the 1999 Act is about the procedure for the imposition of penalties under sections 31A or 32 of that Act (which may be imposed in circumstances where a person is responsible for failing adequately to secure a goods vehicle against access by clandestine entrants or for carrying clandestine entrants). Section 35(3) sets out the grounds on which a person may object to a penalty: that is, they are not liable to it or it is too high. The repeal of section 35(3) was included in the 2022 Act in error

(see letter from the House of Commons Clerk of Legislation to the Speaker dated 9 January 2023), this subsection accordingly repeals paragraph 8(2) of Schedule 5 to the 2022 Act.

# Commencement

289 Clause 57(3) provides for Clauses 52 to 58 to come into force on Royal Assent. The regulation-making powers in Clauses 3, 6, 17, 19, 21, 23, 24, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 49 and 51(6) also come into force on Royal Assent. The remaining provisions will be brought into force by commencement regulations made by the Secretary of State (Clause 57(1)).

# Financial implications of the Bill

290 The main public sector financial implications of the Bill fall to the Home Office and civil justice agencies. The estimated annual cost and benefits (against some £3 billion annual cost of the asylum system) of the measures in the Bill are not yet finalised. These are being worked through as part of the business case. Further details of the costs and benefits of individual provisions will be set out in the impact assessment to be published in due course.

# Environment Act 2021

291 The Home Secretary, the Rt Hon Suella Braverman KC MP, is of the view that the Bill as introduced into the House of Commons does not contain provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made.

# Parliamentary approval for financial costs or for charges imposed

292 The House of Commons passed a money resolution or this Bill on 13th March 2023 to cover expenditure arising under Clauses 2, 5 and 7 (duty to make arrangements for removal), Clauses 10 and 11 (detention) and Clauses 14, 15 and 19 (unaccompanied children) and other administrative expenditure.

# Compatibility with the European Convention on Human Rights

293 Lord Murray of Blidworth has made the following statement under section 19(1)(b) of the Human Rights Act 1998:

"I am unable to make a statement that, in my view, the provisions of the Illegal Migration Bill are compatible with the Convention rights, but the Government nevertheless wishes the House to proceed with the Bill."

294 A statement under section 19(1)(b) of the Human Rights Act 1998 does not mean that the provisions in the Bill are incompatible with the Convention rights. The Government is satisfied that the provisions of the Bill are capable of being applied compatibility with those rights.

295 Both Houses will have an opportunity to thoroughly scrutinise the Bill and once approved the measures in the Bill will have been expressly endorsed by Parliament and the Government would expect the courts to take that into account.

296 The Government has published a separate ECHR memorandum with its assessment of the

compatibility of the Bill's provisions with the Convention rights: this memorandum is available on the Government website.

# Related documents

297 The following documents are relevant to the Bill and can be read at the stated locations:

- New Plan for Immigration: Policy statement, HM Government, March 2021: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972517/CCS207_CCS0820091708-001_Sovereign_Borders_Web_Accessible.pdf
- Consultation on New Plan for Immigration: Government Response, HM Government, July 2021: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005042/CCS207_CCS0621755000-001_Consultation_Response_New_Plan_Immigration_Web_Accessible.pdf
- Factsheet: Small boat crossings since July 2022, Home Office, 2 November 2022: https://www.gov.uk/government/statistics/factsheet-small-boat-crossings-since-july-2022/factsheet-small-boat-crossings-since-july-2022
- Official Statistics: Irregular migration to the UK, year ending December 2022, Home Office, 23 February 2023: https://www.gov.uk/government/statistics/irregular-migration-to-the-uk-year-ending-december-2022/irregular-migration-to-the-uk-year-ending-december-2022
- Memorandum of Understanding between the Government of the UK and the Government of the Republic of Rwanda for the provision of an asylum partnership, April 2022: https://www.gov.uk/government/publications/memorandum-of-understanding-mou-between-the-uk-and-rwanda
- Irregular migration to the UK, year ending September 2022, Home Office, 24 November 2022: https://www.gov.uk/government/statistics/irregular-migration-to-the-uk-year-ending-september-2022/irregular-migration-to-the-uk-year-ending-september-2022
- European Convention on Human Rights, November 1950: https://www.echr.coe.int/Documents/Convention_ENG.pdf
- United Nations Convention Relating to the Status of Refugees, July 1951: https://www.unhcr.org/3b66c2aa10
- Council of Europe Convention on Action against Trafficking in Human Beings, May 2005: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/236093/8414.pdf
- *Hardial Singh* (R (Singh) v Governor of Durham Prison [1983] EWHC1: https://www.bailii.org/ew/cases/EWHC/QB/1983/1.html

- Delegated powers memorandum: https://bills.parliament.uk/publications/50890/documents/3350
- European Convention on Human Rights (ECHR) memorandum (7 March): https://publications.parliament.uk/pa/bills/cbill/58-03/0262/ECHR%20memo%20Illegal%20Migration%20Bill%20FINAL.pdf and supplementary ECHR memorandum (25 April): https://publications.parliament.uk/pa/bills/cbill/58-03/0284/SuppECHRmemo.pdf

# Annex A – Glossary

| | |
|---|---|
| 1951 Refugee Convention | The Convention Relating to the Status of Refugees done at Geneva on 28th July 1951 and the Protocol to that Convention. |
| British overseas territories | Anguilla<br>Bermuda<br>British Antarctic Territory<br>British Indian Ocean Territory<br>British Virgin Islands<br>Cayman Islands<br>Falkland Islands<br>Gibraltar<br>Montserrat<br>Pitcairn Islands<br>Saint Helena, Ascension and Tristan da Cunha<br>South Georgia and the South Sandwich Islands<br>Turks and Caicos Islands |
| Crown Dependencies | Jersey, Guernsey and the Isle of Man |
| Draft affirmative resolution procedure | Draft affirmative is the term used to describe a Statutory Instrument that is laid in draft, but cannot be made into law (signed by the minister) unless the draft is approved by both Houses following a debate. Certain SIs on financial matters are only considered by the Commons. |
| ECAT | Council of Europe Convention on Action against Trafficking in Human Beings |
| ECHR | European Convention on Human Rights |
| IFRT | Independent Family Returns Panel |
| LASPO | Legal Aid, Sentencing and Punishment of Offenders Act 2012 |
| Made affirmative resolution procedure | Made affirmative is the term used to describe a Statutory Instrument that is made into law (signed by the minister) before Parliament has considered it, but that cannot remain law unless it is approved by Parliament within a certain time period (usually 28 or 40 sitting days). |

| | |
|---|---|
| Negative resolution procedure | The negative procedure is a type of parliamentary procedure that applies to statutory instruments (SIs). An SI laid under the negative procedure becomes law on the day the Minister signs it and automatically remains law unless a motion – or "prayer" – to reject it is agreed by either House within 40 sitting days. |
| NRM | National Referral Mechanism |
| NTS | National Transfer Scheme |
| Refugee | A person who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it" (Article 1(A)(2) of the 1951 Refugee Convention). |
| The 1971 Act | Immigration Act 1971 |
| The 1999 Act | Immigration and Asylum Act 1999 |
| The 2002 Act | Nationality, Immigration and Asylum Act 2002 |
| The 2004 Act | Asylum and Immigration (Treatment of Claimants, etc) Act 2004 |
| The 2007 Act | UK Borders Act 2007 |
| The 2009 Act | Borders, Citizenship and Immigration Act 2009 |
| The 2015 Act | Modern Slavery Act 2015 |
| The 2016 Act | Immigration Act 2016 |
| The 2022 Act | Nationality and Borders Act 2022 |
| UK | United Kingdom |

# Annex B – Territorial extent and application in the United Kingdom

| Provision | England | Wales | | Scotland | | Northern Ireland | |
|---|---|---|---|---|---|---|---|
| | Extends to E & W and applies to England? | Extends to E & W and applies to Wales? | Legislative Consent Motion process engaged? | Extends and applies to Scotland? | Legislative Consent Motion process engaged? | Extends and applies to Northern Ireland? | Legislative Consent Motion process engaged? |
| Clauses 1 to 14 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 15 to 18 | Yes | No | No | No | No | No | No |
| Clause 19 | No | Yes | No | Yes | No | Yes | No |
| Clause 20 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 21 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 22 | Yes | Yes | No | No | No | No | No |
| Clause 23 | No | No | No | Yes | No | No | No |
| Clause 24 | No | No | No | No | No | Yes | No |
| Clauses 25 and 26 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 27 | In part | In part | No | In part | No | In part | No |
| Clause 28 | Yes | Yes | No | Yes | No | Yes | No |
| Clauses 29 to 31 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 32* | Yes | Yes | No | Yes | No | Yes | No |
| Clauses 33 to 36 | Yes | Yes | No | Yes | No | Yes | No |
| Clauses 37 to 53 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 54 | Yes | Yes | No | No | No | No | No |
| Clauses 55 and 56 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 57 | Yes | Yes | No | Yes | No | Yes | No |
| Clauses 58 and 59 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 60 | Yes | Yes | No | Yes | No | Yes | No |
| Schedules 1 and 2 | Yes | Yes | No | Yes | No | Yes | No |

*Clause 32 also applies to the British overseas territories

## Subject matter and legislative competence of devolved legislatures

298 The provisions of the Bill relate to immigration (including asylum) and nationality which are reserved matters in Scotland (section B6 of Schedule 5 to the Scotland Act 1998) and Wales (paragraphs 28 and 29 of Schedule 7A to the Government of Wales Act 2006) and excepted matters in Northern Ireland (paragraph 8 of Schedule 2 to the Northern Ireland Act 1998).

# ILLEGAL MIGRATION BILL

# EXPLANATORY NOTES

These Explanatory Notes relate to the Illegal Migration Bill as brought from the House of Commons on 27 April 2023 (HL Bill 133).

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Ordered by the House of Lords to be printed, 27 April 2023

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