

# BORDER SECURITY, ASYLUM AND IMMIGRATION BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Border Security, Asylum and Immigration Bill as brought from the House of Commons on 13 May 2025 (HL Bill 101).

- These Explanatory Notes have been provided by the Home Office 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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## Overview of the Bill

- 1 The Bill establishes the architecture and provides the tools, powers and offences to transform the cross-system response to the threats against UK border security and strengthen the operation of the border security, asylum and immigration systems.
- 2 The purpose of the Bill is to improve UK border security and strengthen the asylum and immigration system by creating a framework of new and enhanced powers and offences that, when taken together, reinforce, strengthen and connect capabilities across the relevant government and law enforcement partners which make up the UK's border security, asylum and immigration systems.
- 3 While the measures within the Bill enable a response to the range of current and future threats to the UK border, the intention in the immediate term is to support the Border Security Command's focus on preventing, investigating and prosecuting Organised Immigration Crime (OIC), providing additional deterrents and penalties for criminals involved in such activity. The Bill will:
  - a. enable smarter, faster and more effective interventions to protect UK border security;
  - b. make it easier to detect, disrupt and deter those seeking to engage in and benefit from OIC, limiting the permissible environment and its impact; and
  - c. improve understanding of how and why OIC happens.
- 4 The Bill includes the following measures:
  - a. Clauses 1 to 12 set out provisions to make the Border Security Commander a Statutory Office Holder and details their functions in this role.
  - b. Clauses 13 to 18 set out new offences in relation to the preparatory acts to commit an immigration offence and endangering another during a sea crossing to the United Kingdom.
  - c. Clauses 19 to 26 set out the powers for an immigration officer or police constable to search, seize and retain information stored on electronic devices.
  - d. Clauses 27 to 33 relate to the sharing of customs information by His Majesty's Revenue and Customs (HMRC) and the sharing of trailer registration information to assist with Home Office functions.
  - e. Clauses 34 and 35 set out provisions relating to the provision of biometric information outside of a visa application process and the use and retention of that information.
  - f. Clause 36 sets out the powers in ports in Scotland to take fingerprints.
  - g. Clauses 37 to 39 set out the repeal of immigration legislation in relation to certain sections of the Illegal Migration Act 2023 and the entirety of the Safety of Rwanda (Asylum and Immigration Act) 2024.
  - h. Clause 40 sets out new powers in relation to the Immigration Services Commissioner.
  - i. Clause 41 sets out changes to the power to detain a person ahead of deportation.
  - j. Clause 42 sets out provision relating to the rights of European Union (EU), other European Economic Area and Swiss nationals, and their family members, with leave to enter or remain in the UK granted under the EU Settlement Scheme.

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- k. Clause 43 sets out provisions to strengthen the powers available to protect the public from migrants that pose a threat through placing additional conditions on them.
- l. Clause 44 sets out new powers in relation to the taking of biometric information.
- m. Clause 45 sets out changes to extend the scope of employers required to carry out right to work checks to prevent illegal working and the associated sanctions for non-compliance.
- n. Clauses 46 and 47 set out changes to the timelines for appeals for non-detained individuals convicted of an offence and is liable to deportation, and those receiving accommodation support.
- o. Clause 48 redefines the UK's interpretation of a 'particularly serious crime' for the purposes of excluding refugees from the protection against refoulement, in line with Article 33(2) of the Refugee Convention
- p. Clauses 49 to 51 set out a new offence in relation to the articles used in Serious Organised Crime.
- q. Clauses 52 to 56 set out amendments to Serious Crime Prevention Orders and the introduction of Interim Serious Crime Prevention Orders.
- r. Clause 57 sets out the validation of fees charged in relation to the recognition of professional qualifications.

## Policy background

- 5 Across the world, migration is increasing as individuals seek to escape war, poverty, or natural disasters. Whilst migration is a truly global issue, an increasing number of people are using dangerous routes to access mainland Europe, some of whom then continue to the United Kingdom.
- 6 The government is determined to tackle this issue and to secure the UK border, whilst building a modern, effective and properly functioning immigration and asylum system which will protect those fleeing from danger whilst promptly processing and returning those with no right to remain. The Government believes that a step change in the scale of the response to these cross-system threats is needed urgently: the response needs to get ahead of the evolving, inter-connected threats faced.
- 7 In the United Kingdom, there have been an increased numbers of individuals presenting at or seeking to cross the border irregularly through a variety of different routes.
- 8 There are a range of methods that individuals use to enter and/ or remain in the United Kingdom without the correct permission, including crossing the English Channel or overstaying visas.
- 9 Criminal gangs are exploiting this situation for profit, smuggling people and goods across the UK border. Based across the world, many base their operations in mainland Europe to avoid detection by UK authorities.
- 10 Whilst inflatable vessels are currently the most prevalent method for irregular migration, there have been several cases of individuals using other routes which are equally as dangerous, including the tragedy at Purfleet which resulted in the deaths of 39 Vietnamese migrants in a refrigerated trailer.

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## Statistics

- 11 The number of irregular migrants arriving in the UK peaked at 54,702 arrivals in 2022, with a further 36,699 arrivals in 2023. In the year ending September 2024, there were 36,949 detected irregular arrivals, 81% of these arrived by small boats<sup>1</sup>.
- 12 Small boats have been the predominant recorded method of entry for irregular arrivals since 2020, when entries by this method increased rapidly and entries by other methods declined.
- 13 In 2024, 36,816 migrants arrived in the UK on 695 small boats. This increased from 29,437 migrants on 602 in 2023. The average number of people per boat has also increased, to 53 people per boat in 2024 compared with an average of 41 people per boat in 2022. The high number of people per boat only serves to increase the danger of these crossings.<sup>2</sup>
- 14 In the year ending September 2024, less than one fifth of detected irregular arrivals consisted of Inadequately documented air arrivals (9%), Recorded detections in the UK (9%) and Recorded detections at UK ports (1%).<sup>3</sup>
- 15 Between 2015 and September 2024 the UK offered refuge to over half a million (642,821) people, through safe and legal routes, including those from Hong Kong, Syria, Afghanistan and Ukraine, as well as family members of refugees.<sup>4</sup>
- 16 The Government recognises this increase in all arrivals has put strain not only on the UK's immigration and asylum system, but also on local authorities who seek to house and care for individuals and provide services to the public. Global instability, coupled with fewer asylum decisions being made have contributed towards the backlog of asylum cases standing at 224,742 at the end of June 2024. This is a four-fold increase over the last decade, with 55,814 cases in June 2014.<sup>5</sup>
- 17 The increase in irregular arrivals has been driven by organised criminal gangs operating smuggling networks across Europe, many of which also have links to the smuggling of illicit and illegal goods.
- 18 Threats to the UK from serious and organised crime, including organised immigration crime are rapidly evolving. Serious and organised crime is estimated to cost the UK at least £47 billion annually.<sup>6,7</sup>

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<sup>1</sup> Irregular arrivals <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-september-2024/how-many-people-come-to-the-uk-irregularly?>

<sup>2</sup> Small boat activity in the English Channel - GOV.UK - <https://www.gov.uk/government/publications/migrants-detected-crossing-the-english-channel-in-small-boats>

<sup>3</sup> Irregular arrivals <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-september-2024/how-many-people-come-to-the-uk-irregularly?>

<sup>4</sup> Immigration system statistics data tables - GOV.UK - <https://www.gov.uk/government/statistical-data-sets/immigration-system-statistics-data-tables#asylum-and-resettlement>

<sup>5</sup> How many cases are in the UK asylum system? - GOV.UK - <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-september-2024/how-many-cases-are-in-the-uk-asylum-system>

<sup>6</sup> The social and economic costs of organised crime to the UK is estimated to be approximately £37 billion in FY 2015 to 2016, based on Home Office, 'Understanding Organised Crime Estimating the scale and the social and economic costs', November 2018. This figure is inflated using November 2023 HMT GDP Deflator which produces a cost estimate of £47bn in 23/24 prices. These estimates are likely to be a lower bound since the contributing estimates (for the separate SOC threats) are generally conservative and in some cases partial. Since the Home Office 'Understanding Organised Crime Estimating the scale and the social economic costs', November 2018 report, updated costs have been estimated and published for contact Child Sexual Abuse (The economic and social cost of contact child sexual abuse), Drugs (Dame Carol Black's Independent Drugs Review), and Fraud (Fraud Strategy: stopping scams and protecting the public). The £47 billion figure does not include these updated published cost figures due to methodological differences.

<sup>7</sup> CP 992 – No Place to Hide: Serious and Organised Crime Strategy 2023-2028 ([publishing.service.gov.uk](https://publishing.service.gov.uk))

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- 19 For example, in 2023, there were 25 cases involving the seizure of 3D-printed firearm component parts, or items associated with 3D-printing of firearms (such as printers or blueprints) during targeted police searches. This is an increase on 17 cases in 2022. Five of the cases in 2023 involved the seizure of a complete firearm, with only one of these confirmed through testing as a viable 3D-printed firearm. In the remaining 20 cases, only 3D-printed parts were recovered.<sup>8</sup>
- 20 In 2020, Police Scotland recovered pill presses from an organised crime group used to produce Etizolam, a Class C drug which in the same year was a factor in more than 800 drug-related deaths in Scotland.<sup>9</sup> NCA Lead Investigator Rory Duffin said: “The NCA investigation found Sorrenti was providing criminals with professional-standard customer service, supplying equipment, ingredients and instructions to create hundreds of thousands of potentially fatal drugs, and troubleshooting problems that arose.”
- 21 The Government believes that it is vital that the approach to border security also addresses the wide range of serious and organised criminality threats faced by the public.

## Border Security

- 22 The Government views the United Kingdom’s border as a vital strategic asset, protecting the public from international threats, enforcing domestic laws and underpinning legitimate systems to enable citizens to go about their lives freely and confidently.
- 23 The Border Security Command (BSC) was established on 5 July 2024 and is being led by Martin Hewitt CBE QPM. The BSC will lead and drive forward the required step change in the UK’s approach to border security. The Government believes this will, for the first time, provide a clear and long-term vision for border security, bringing together and providing leadership to all parts of the system that work to maintain the integrity of both border and immigration systems, domestically and internationally.
- 24 With the collective agreement of the Home Secretary and Prime Minister, the Border Security Commander will set the government’s strategic priorities for border security. The BSC will work closely with other government departments, including HMRC and the Foreign, Commonwealth and Development Office (FCDO), as well as operational partners, including Border Force, the National Crime Agency (NCA), Immigration Enforcement and policing, to deliver on those priorities. This will ensure that the full range of capabilities, including that of the UK intelligence community, are maximised and brought to bear on those exploiting the UK border.
- 25 The BSC’s first priority is tackling OIC and reducing irregular migration to the UK. While the techniques used by Organised Crime Groups (OCGs) to facilitate irregular migration are growing increasingly sophisticated, the demand for their services also continues to rise in response to global instabilities, ranging from conflict to climate and economic factors.
- 26 The Government proposes that a new approach is therefore needed, which considers the end-to-end process of OIC, targeting each stage to make facilitation unviable and prevent OCGs from operating. The new approach to tackling OIC will:

**Prevent:** disincentivise migrants and deter OCGs from participating in OIC.

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<sup>8</sup> [NSA 2024 - Firearms - National Crime Agency](#)

<sup>9</sup> [Businessman who gave drug suppliers “professional customer service” is jailed - National Crime Agency](#)



**Pursue:** disrupt OCGs and their criminal activity.

**Protect:** detect and act on OIC at the border.

**Prepare:** manage, learn from and adapt the UK's response to tackling OIC.

- 27 The Bill will underpin these efforts, seeking to reinforce, strengthen and connect capabilities across the relevant Government and law enforcement partners which make up the border security system.

## Organised Immigration Crime

- 28 Over several years, the threat from OIC has developed, with organised crime networks operating across multiple countries as supply chain networks have become more advanced. The Government has assessed the impact that these criminal enterprises have had on a variety of aspects of public life, not least the smuggling of individuals across the UK border.
- 29 This Bill aims to deter and penalise those involved in organised crime, with new powers to pursue, disrupt and arrest those responsible for facilitating organised immigration crime. It aims to ensure a greater intelligence picture is available to law enforcement, with powers to enable agencies to share crucial data with law enforcement to build a more comprehensive picture on the activities of those suspected of carrying out OIC. The ability to seize and search electronic devices are intended to help law enforcement to identify those facilitating dangerous routes to the UK.

## Powers and Offences

- 30 Providing law enforcement with the tools to disrupt OIC is a key priority for this Bill. The legislation introduces new enhanced powers to tackle, investigate and prosecute OIC, and provide additional deterrents and penalties for criminals involved in OIC. The interventions aim to strengthen the UK's border security beyond OIC, with additional powers for law enforcement and the justice system to prevent other individuals and groups involved in serious and organised crime from harming the UK.
- 31 The Bill contains new measures aimed at disrupting the networks of criminals by targeting their operations and introducing a new offence relating to the handling of articles for use in OIC and a new offence relating to the research or planning of an OIC offence. These measures will target the activities of facilitators and OCGs who look to profit from OIC. Alongside this, new powers of search, seizure, retention and extraction will be introduced for Immigration Officers and/or a police constable where there are reasonable grounds to suspect that a person, who is in the relevant "cohort" of people has an electronic device that contains information or evidence relevant to facilitation offences under section 25 or 25A of the IA 1971. This seeks to enable law enforcement to obtain an enhanced intelligence picture on OCG activity and help to provide clear strategic direction on how to mitigate against illegal means of travel.
- 32 As dangerous small boat crossings continue in the English Channel, the tragic loss of life continues to rise. The Government seeks to address the actions and behaviours of those who put others in serious danger. This legislation seeks to enable the prosecution of individuals who place any other person at risk of death or serious injury whilst attempting to enter the UK unlawfully via a small boat (and other clandestine methods of irregular arrival).
- 33 Where a foreign national poses a threat to the public but cannot be removed from the UK because of our obligations under domestic and international law, they are granted permission to stay. Currently law enforcement does not have the ability to impose the same conditions

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which can be imposed on a person on immigration bail, irrespective of the threat posed by the person. Provisions in this Bill strengthen the powers available to protect the public from migrants that pose a threat. Decisions to impose these conditions will be taken on a case-by-case basis and subject to an ECHR proportionality analysis. Curfews, inclusion zones and exclusion zones will only be imposed in cases where electronic monitoring is not sufficient to mitigate the threat posed by the person. The powers will only be used in cases involving conduct such as war crimes, crimes against humanity, extremism, serious crime or where the person poses a threat to national security or public safety.

## Non-legislative programme

- 34 The BSC will continue to drive change beyond these legislative measures set out in the Bill. It will seek out non-legislative reforms to better support law enforcement and wider partners to understand, identify and tackle OIC. Money laundering underpins and enables most forms of organised crime, allowing OCGs to further their operations and conceal their assets. The BSC will therefore seek to establish closer working relationships with the banking sector to prevent the flow of illicit finance and degrade the profits of OCGs facilitating irregular migration.
- 35 The BSC will redirect money previously earmarked for the Migration and Economic Development Partnership to support law enforcement in their efforts to tackle OIC, ensuring they are equipped to stay ahead of the threat. The BSC will seek to identify and share best practice across policing, support the consistent sharing of intelligence and proactively consider emerging policy options and levers most likely to achieve the greatest disruptive effect against the OCGs facilitating OIC.
- 36 The Government is determined to tackle the threat of OIC, and is working closely with international partners to develop strategic solutions to tackle the problem from route to source. The Government will expand overseas networks, deploying additional officers to build relationships, develop capabilities where needed and collaborate operationally with individual transit countries, countries of origin and partner countries, as well as multilaterally. The BSC will lead the system to:
  - a. Work with the EU and EU Member States to improve and strengthen legislative responses to Organised Immigration Crime, ensuring legislation in this area addresses the range of destinations and transit routes being used and the breadth of criminal activity people smugglers are involved in;
  - b. Ensure the UK plays its part in Europol with more dedicated resource and capability, including through an uplifted UK presence;
  - c. Deepen operational cooperation with the EU on Organised Immigration Crime as part of a wider UK-EU reset, including access to real-time intelligence and enhanced cooperation between policing teams;
  - d. Demonstrate leadership and creativity in enforcement responses to Organised Immigration Crime, including with European partners (e.g. through Calais Group, new UK led Organised Immigration Crime international fora, G7, G20 etc); and
  - e. Encourage greater action from transit and countries of origin, working with the EU and international partners to deliver the required change.

## Data Sharing

- 37 As organised criminality evolves, it is crucial that law enforcement have the most relevant intelligence available to them in order to detect and disrupt criminal gangs. It is important

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that the government utilises the data available to be able to detect this criminality and keep citizens safe.

- 38 The Bill contains measures aimed at removing barriers and simplifying data sharing processes with HMRC, allowing this data to be used for a range of Home Office functions including immigration, law enforcement and national security. Alongside this, measures to allow the Driver and Vehicle Licensing Agency (DVLA) to share trailer data with the Home Office, HMRC, and operational partners will ensure that the full range of capabilities are utilised when tackling those looking to exploit the UK Border.

## Serious and Organised Crime and other threats

- 39 The UK border is both a potential vulnerability and a critical intervention point against organised criminals. Many OCGs who engage in smuggling people across the border, also see opportunities in using these activities to further their organisations by importing dangerous goods for use in organised crime in the UK.
- 40 Serious and organised crime often drives local-level criminal activity, as the distribution of illegal drugs and firearms contributes significantly to violence and disorder within communities. By disrupting the articles and networks that enable these criminal activities, the measures in this Bill help reduce the broader societal harm caused by serious and organised crime. This proactive stance in intercepting the possession and supply of crime-facilitating articles supports the government's mission of making UK neighbourhoods safer and decreasing crime rates on the streets.
- 41 Alongside these measures relating to the possession and supply of articles used in Serious and Organised Crime, this Bill will also strengthen the Serious Crime Prevention Order regime introduced in the Serious Crime Act 2007, to further prevent and disrupt the operations of these groups including those who seek to carry out immigration offences. The introduction of Interim Serious Crime Prevention Orders will ensure law enforcement partners can take immediate action in the absence of a conviction to prevent criminal activity before it occurs.
- 42 The Bill also amends the CT port powers (Schedule 7 to the Terrorism Act 2000 and Schedule 3 to the Counter-Terrorism and Border Security Act 2019) to allow the police to take DNA samples and fingerprints (biometrics) at a port in Scotland, bringing Scotland into alignment with the position across England, Wales, and Northern Ireland.

## The Illegal Migration Act 2023

- 43 The Illegal Migration Act 2023 sought to create a system in which anyone arriving illegally in the UK would not have their asylum claim, human rights claim, or modern slavery referral considered while they are in the UK, but they would instead have been removed either to their home country, subject to a safe returns assessment, or to a safe third country to have their protection claims processed there.
- 44 A small number of provisions of the Illegal Migration Act 2023 were commenced. This Bill repeals provisions in the Illegal Migration Act, including the duty to remove and its associated provisions. The Bill removes the following provisions from the statute book:
- a. Sections 1 to 6 and Schedule 1;
  - b. Sections 7 to 11;
  - c. Sections 13 to 15 and Schedule 2;

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- d. Sections 16 to 28;
  - e. Sections 30 to 51;
  - f. Sections 53 to 58; and
  - g. Sections 61 and 66.
- 45 Some provisions have been retained either in their current form or with amendment where operational benefit exists. These are:
- a. section 12;
  - b. section 29;
  - c. section 52
  - d. section 59
  - e. section 60
  - f. section 62
  - g. sections 63 to 65,
  - h. and sections 67 to 69.

## **The Safety of Rwanda (Asylum and Immigration) Act 2024**

- 46 The Safety of Rwanda Act (Asylum and Immigration) Act 2024 ('the Safety of Rwanda Act') was introduced following the Supreme Court judgment in *R (on the application of) AAA and others v Secretary of State for the Home Department* [2023] UKSC 42 on 15 November 2023. That judgement concluded that the Migration and Economic Development Partnership (MEDP) into which the previous government had entered with the Republic of Rwanda and under which individuals who entered the UK via dangerous, illegal or unnecessary means would be relocated to Rwanda for asylum processing, was unlawful.
- 47 In response to this judgement, the previous government agreed the UK-Rwanda Treaty, which replaced the commitments agreed under the previous Memorandum of Understanding that had been considered by the Courts. The Treaty was laid in Parliament on 6 December 2023. The Safety of Rwanda Act received Royal Assent and came into force when the Treaty came into force on 25 April 2024.
- 48 The Safety of Rwanda Act:
- a. Confirms that the Republic of Rwanda is a safe third country for the purposes of removal;
  - b. Confirms that the Government of the Republic of Rwanda will fulfil its obligations under the Treaty with the UK;
  - c. Ensures that any court or tribunal conclusively treats Rwanda as a safe for the purposes of asylum and removal.
- 49 No enforced removals to Rwanda ever took place under the terms of the UK-Rwanda Treaty. As the government does not intend to proceed with the MEDP, the Safety of Rwanda Act will serve no practical purpose. The Government intends to formally bring an end to the Treaty with Rwanda. This will deliver on the Government's manifesto commitment to end the MEDP.

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## Legal background

50 The Bill amends the following legislation:

- a. the Immigration Act 1971
- b. the Immigration and Asylum Act 1999
- c. the British Nationality Act 1981
- d. the Terrorism Act 2000
- e. the Criminal Justice and Police Act 2001
- f. the Nationality, Immigration and Asylum Act 2002
- g. the Proceeds of Crime Act 2002
- h. the Serious Crime Act 2007
- i. the UK Borders Act 2007
- j. the Immigration Act 2016
- k. the Data Protection Act 2018
- l. the Counter-Terrorism and Border Security Act 2019
- m. the Nationality and Borders Act 2022
- n. the Illegal Migration Act 2023
- o. the Online Safety Act 2023
- p. the Immigration (European Economic Area) Regulations 2016 (S.I. 2016/1052)
- q. the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 (S.I. 2020/61)
- r. the Immigration (Collection, Use and Retention of Biometric Information and Related Amendments) Regulations 2021 (S.I. 2021/772).

51 The Bill repeals the Safety of Rwanda (Asylum and Immigration) Act 2024 in its entirety.

## Territorial extent and application

- 52 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.
- 53 There is a convention (“the Sewel Convention”) that the UK Parliament 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).
- 54 The following provisions in the Bill involve the UK Parliament legislating for a matter that is within the legislative competence of a devolved legislature, and engage the Legislative Consent Motion process under the Sewel Convention:

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- a. Supply of trailer registration information (clauses 30-33) will engage the LCM process in Northern Ireland.
- b. Offences relating to things for use in serious crime (clause 49) will engage the LCM process in Scotland and Northern Ireland.
- c. Measures relating to the breach of an Interim Serious Crime Prevention Order in non-terrorism cases (clause 53) will engage the LCM process in Scotland and Northern Ireland.
- d. Validation of fees charged in relation to qualifications (clause 57) will engage the LCM process in Wales, Scotland and Northern Ireland.

### Extent in the Channel Islands, Isle of Man and the British Overseas Territories

55 The Bill extends the following provisions to the Channel Islands, the Isle of Man and the British Overseas Territories:

- a. Section 38(1)(a) so far as it repeals section 4(7) to (10) of the Illegal Migration Act 2023 as it extends to the Channel Islands and the Isle of Man and the British Overseas Territories.
- b. Section 38(1)(e) so far as it repeals section 21 to 37 of that Act.
- c. Section 39(2)

56 By Order in Council, the provisions of this Bill except sections 1 to 12, 24, 27 to 33, 36 to 39 and 42 and Part 3 may be extended to any of the Channel Islands or the Isle of Man.

# Commentary on provisions of Bill

## Part 1: Border Security

### Chapter 1: The Border Security Commander

#### Clause 1: The Border Security Commander

- 57 This clause makes provision for the Border Security Commander (“the Commander”) to be a statutory office holder.
- 58 Subsection (1) requires the Secretary of State to designate a civil servant as the Commander.
- 59 Subsection (2) ensures that the Commander is to carry out the functions of the statutory office on behalf of the Crown, and subsection (3) ensures that service as the Commander is in the civil service of the State.
- 60 To enable the Commander to perform their functions, subsection (4) requires the Home Secretary to provide civil servants or other persons to give appropriate assistance to the Commander.

#### Clause 2: Terms and conditions of designation etc

- 61 This clause makes provision about the terms and conditions of designation.
- 62 Subsection (1) requires the Commander to hold and vacate office in accordance with the terms and conditions of designation. This is subject to subsections (3) to (5). Subsection (2) provides that such terms and conditions are to be determined by the Secretary of State.
- 63 Subsection (3) provides that the Secretary of State may also terminate the designation of the Commander in the interests of efficiency or effectiveness, or by reason of misconduct, or of any failure by the Commander to comply with the terms and conditions of the designation.
- 64 Subsection (4) requires that, before terminating the designation of the Commander, the Secretary of State must: write to the Commander setting out his or her reasons; give the Commander the opportunity to make written representations; and consider any such representations made by the Commander. In the event of any decision to terminate, termination may be immediate or may be following period of time determined by the Secretary of State.

#### Clause 3: Functions of the Commander

- 65 This clause makes provision for the functions of the Commander.
- 66 Subsection (1) requires the Commander to have regard to the objectives of a) maximising the effectiveness of the activities of partner authorities relating to threats to border security, for the purpose of minimising such threats; and b) maximising the coordination of those activities for that purpose.
- 67 Subsection (2) requires the Commander to issue a strategic priority document from time to time. The document must include the principal threats to border security, as viewed by the Commander at the time the document is issued. The document must also set out the strategic priorities to which partner authorities should have regard in exercising their functions in relation to any of the principal threats identified in the strategic priority document.
- 68 In exercising its functions in relation to threats to border security, a partner authority must have regard to the strategic priority document (subsection (3)).

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- 69 Subsection (4) provides that, before issuing a strategic priority document, the Commander must: consult the Board at a meeting of the Board; and obtain the consent of the Secretary of State to issue the document.
- 70 Subsection (5) sets out definitions of “border security”, “partner authority” and “public authority”. Subsection (6) also outlines the exclusion from the definition of “partner authority” (and therefore in relation to subsequent obligations on partner authorities) for (a) the Security Service, (b) the Secret Intelligence Service, and (c) the Government Communications Headquarters. (See also subsections (3) and (4) of clause 5 in relation to those bodies.)
- 71 Subsection (7) provides that, for the purpose of this Bill but subject to subsection (9), threats to border security include the passage or conveyance of any person or thing towards, into or out of the United Kingdom, or the organisation of or preparation for such passage or conveyance, in circumstances mentioned in subsection (8).
- 72 Subsection (8) identifies the circumstances where the passage, conveyance, organisation or preparation as referred to in subsection (7): (a) constitutes an offence under the law of any part of the United Kingdom; (b) creates a risk of the commission of an offence under the law of any part of the United Kingdom; or (c) threatens harm of any kind to persons or property in the United Kingdom.
- 73 Subsection (9) provides that, for the purpose of this Bill, threats to border security do not include threats relating to a customs revenue matter as defined in section 7(2) of the Borders, Citizenship and Immigration Act 2009.

#### Clause 4: Duty to prepare annual reports

- 74 This clause makes provision in respect of the Commander’s annual report.
- 75 Subsections (1) and (2) place a duty on the Commander to prepare an annual report on the exercise of the Commander’s functions during the previous financial year (defined in subsection (5)), which must also include the Commander’s views on the performance of the border security system (as defined in subsection (5)) with particular reference to any strategic priorities identified by the Commander in a strategic priority document issued under clause 3.
- 76 Subsection (3) requires the Commander to send a copy of the annual report to the Secretary of State.
- 77 Subsection (4) requires the Secretary of State to lay the annual report before Parliament and arrange for it to be published. In practice, publication will be in a manner which the Secretary of State considers appropriate.

#### Clause 5: Duties of cooperation etc

- 78 This clause provides that a partner authority has a duty, so far as appropriate and reasonably practicable, to cooperate with the Commander in the carrying out of the Commander’s functions (subsection (1)).
- 79 The duty of cooperation extends only so far as the cooperation is compatible with the exercise of the partner authority’s other functions (subsection (2)).
- 80 Subsections (3) and (4) require the Commander, the Director General of the Security Service, the Chief of the Secret Intelligence Service and the Director of GCHQ, to put in place arrangements governing cooperation between the Commander and those persons in support of the Commander’s functions.

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## Clause 6: The Board

- 81 This clause provides for a Board and its membership.
- 82 Subsection (1) places a duty on the Commander to establish and maintain a Board to assist the Commander in the exercise of the Commander's functions.
- 83 Subsection (2) requires that board (referred to in Chapter 1 of Part 1 of this Bill as 'the Board') to operate under the name which is specified from time to time by the Commander.
- 84 Subsection (3) requires a) the Commander to be the chair of the Board; and b) one or more representatives nominated by each partner authority which the Commander has for the time being determined should nominate one or more representatives to the Board (see also subsection (4)).
- 85 Subsection (5) allows the Commander to invite any public authority than a partner authority to nominate one or more representatives of that authority to attend a particular meeting of the Board.
- 86 Subsection (6) requires the Commander to hold meetings of the Board at such intervals as the Commander thinks appropriate.
- 87 Subsection (7) provides that, where a person is required to nominate a representative as a member of the Board, the person (a) must take reasonable steps to ensure that the representative attends meetings of the Board; and (b) may, if the representative is unable to attend a particular meeting, arrange for another representative of that person to attend as a member of the Board in that representative's place.

## Clause 7: Delegation by the Commander

- 88 This clause makes provision about the delegation of the Commander's functions.
- 89 Subsection (1) allows the Commander to delegate the functions conferred on the Commander under the Bill to be exercisable by any civil servant authorised by the Commander.
- 90 Subsection (2) ensures that a function of the Commander may be delegated entirely or subject to limitations or conditions.
- 91 Subsection (3) gives the Commander the power to limit the duration of a delegation as well as to vary or revoke the delegation at any time. It also reserves the right of the Commander to continue to exercise a function that has been delegated.
- 92 Subsection (4) provides that any act or omission by a person in exercising a function of the Commander delegated to them under subsection (2) is to be treated as being done or omitted to be done by the Commander.

## Clause 8: Designation of an Interim Border Security Commander

- 93 This clause makes provision for the designation of an Interim Border Security Commander.
- 94 Subsection (1) provides that such a designation is applicable if the Secretary of State thinks that (a) the designation of a person as the Commander has terminated, or is going to terminate, and there will be gap before a new designation is made, or (b) the Commander is, or is going to be, temporarily incapacitated or temporarily unavailable to exercise the Commander's functions.

- 95 Subsection (2) provides that the Secretary of State may designate a civil servant as the Interim Border Security Commander to exercise the functions of the Commander under this Bill for such period as the Secretary of State thinks appropriate.
- 96 Subsection (3) identifies that that period may not be longer than the period for which no Commander is designated or (as the case may be) the Commander is incapacitated or unavailable.
- 97 Subsection (4) provides that, while a designation under this clause has effect, references in this Bill (other than in this clause) or in any other enactment or instrument to the Commander include a reference to the Interim Border Security Commander.
- 98 Subsection (5) provides that an individual is not prevented from being designated as the Commander merely because they have previously been designated as the Interim Border Security Commander.

### Clause 9: Directions and guidance by the Secretary of State

- 99 This clause makes provision about directions and guidance of the Secretary of State to the Commander.
- 100 Subsection (1) requires the Commander to comply with directions given by the Secretary of State about the exercise of the Commander's functions under this Bill, and to have regard to guidance issued by the Secretary of State about the exercise of those functions (subsection (2)).
- 101 Subsection (3) provides that directions and guidance under this clause may be revised or withdrawn from time to time.

### Clause 10: Exclusion of application to the armed forces

- 102 This clause makes clear that this Chapter of the Bill does not apply to the naval, military or air forces of the Crown (including reserve forces).

### Clause 11: Amendment of Schedule 7 to the Data Protection Act 2018

- 103 This clause makes provision for the amendment of Schedule 7 to the Data Protection Act 2018, in order to include "the Border Security Commander" to the list of competent authorities in relation to the processing of personal data carried out for a law enforcement purpose.

### Clause 12: Interpretation

- 104 This clause provides definitions of terms used in Chapter 1 of the Bill.

## Chapter 2: Other Border Security Provision

### Offences relating to articles or information for use in immigration crime

#### Clause 13: Supplying articles for use in immigration crime

- 105 Subsection (1) provides that a person commits an offence if:
- they supply or offer to supply a relevant item to another person, and
  - at the time they do so, they know or suspect that the item is to be used by any person in connection with an offence under section 24 or 25 of the Immigration Act 1971 (respectively, illegal entry etc and assisting unlawful immigration).

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- 106 Subsection (2) sets out that it is a defence to show that they had a reasonable excuse for the action in subsection (1).
- 107 Subsection (3) outlines that a person has such reasonable excuse in situations including, but not limited to, where they are taking action to carry out a rescue of someone from danger or serious harm, or where their action is on behalf of an organisation that aims to assist asylum-seekers and does not charge for its services.
- 108 Subsection (4) outlines that a person is to be treated as showing that they have a reasonable excuse for the action if there is sufficient evidence to raise an issue with respect to it, and the contrary is not proved beyond reasonable doubt.
- 109 Subsection (5) outlines that a person who commits an offence under this section is liable on conviction on indictment to imprisonment for term not exceeding 14 years.
- 110 Subsection (6) sets out that for the purpose of this clause, clause 14 and 16, an “asylum seeker” means a person who intends to claim that to remove them from or require them to leave the United Kingdom would be contrary to the United Kingdom’s obligations under the Convention relating to the Status of Refugees, or the European Convention for the Protection of Human Rights and Fundamental Freedoms.

#### Clause 14: Handling articles for use in immigration crime

- 111 This clause sets out where a person is handling ‘relevant articles’ (see clause 15 for the meaning of relevant article) in relation to certain immigration offences, commits an offence.
- 112 Subsection (1) sets out that a person commits an offence in the circumstances set out in subsection (2) if:
- a. they receive or arrange to receive a relevant article from another person,
  - b. they remove or dispose of a relevant article for the benefit of another person, or
  - c. they assist another person to remove or dispose of a relevant article.
- 113 Subsection (2) sets out the circumstances where a person takes any action outlined in subsection (1), knowing or suspecting at the time that the item(s) in question has been, is being or will be used by themselves or others in connection with an offence under section 24 or section 25 of the Immigration Act 1971 (illegal entry etc and assisting unlawful immigration).
- 114 Subsection (3) sets out that it is a defence for a person to show that they had a reasonable excuse for action in subsection (1).
- 115 Subsection (4) outlines that a person has a reasonable excuse in situations including, but not limited to, where they are taking action to carry out a rescue of someone from danger or serious harm, or where their action is on behalf of an organisation that aims to assist asylum-seekers and does not charge for its services.
- 116 Subsection (5) outlines that a person has a reasonable excuse for the action if there is sufficient evidence to raise an issue with respect to it, and the contrary is not proved beyond reasonable doubt.
- 117 Subsection (6) outlines that a person who commits an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

#### Clause 15: Sections 13 and 14: meaning of “relevant article”

- 118 This clause defines the meaning of “relevant article” for the purposes of clauses 13 and 14.

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119 Subsection (1) provides that a “relevant article” is any thing or substance other than those in the list at paragraphs (a) to (h).

120 Subsection (2) sets out that the meaning of items specified at subsection (1)(f) and (g) does not include any vessel designed to be used for transportation by water.

121 Subsection (3) sets out that the Secretary of State may by regulations amend this section to add to the list of things and substances specified in subsection (1) which are not relevant articles and make any consequential provisions. Such regulations will be subject to the draft affirmative procedure (see clause 53(3)).

## Clause 16: Collecting information for use in immigration crime

122 This clause sets out where a person collecting information for use in relation to certain immigration offences commits an offence.

123 Subsection (1) defines that a person commits an offence in the circumstances set out in subsection (2) if:

- a. they collect or make a record of information of a kind likely to be useful to a person organising or preparing for a relevant journey (see subsection (5) for the meaning of relevant journey) or part of such a journey,
- b. they possess a document or record containing information of that kind, or
- c. they view, or otherwise access by means of the internet a document or record containing information of that kind.

124 Subsection (2) sets out that the circumstances are where there is a reasonable suspicion that the record or document, or any information contained in it, will be used in organising or preparing for a relevant journey (see subsection (5) for the meaning of relevant journey) or part of such a journey.

125 Subsection (3) outlines that a person collects or makes a record per subsection (1)(a) including (but not limited to) by means of the internet (whether by downloading the record or otherwise).

126 Subsection (4) sets out that the information may be useful for a particular purpose whether or not it may also be useful to members of the public at large for any purpose.

127 Subsection (5) defines ‘relevant journey’ as a journey involving transporting one or more individuals from outside of the United Kingdom to a place within the United Kingdom where entry or arrival would constitute an offence under section 24 of the Immigration Act 1971 (illegal entry etc).

128 Subsection (6) sets out that it is a defence for a person charged with an offence under this section to show that their action or possession was for the purposes of a journey to be made only by them and not anyone else.

129 Subsection (7) sets out that it is a defence for a person to show that they had a reasonable excuse for the action or possession outlined in subsection (1).

130 Subsection (8) sets out a non-exhaustive list of cases in which a person has a reasonable excuse for the purposes of subsection (7). This includes: where at the time of the action or possession, the person did not know and had no reason to believe that the document or record was likely to contain information of a kind likely to be useful to a person organising or preparing for a relevant journey or part of such a journey, carrying out work as a journalist, academic

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research, carrying out or preparing to carry out a rescue of a person from danger or serious harm, providing or preparing to provide medical care or emergency shelter or supplies, or on behalf of an organisation that aims to assist asylum-seekers and does not charge for its services.

131 Subsection (9) sets out that in relation to the defences in subsections (6) and (7), where it is a defence for a person to show a particular matter, the person will be treated as having shown that matter if they adduce sufficient evidence in relation to the matter in question to raise an issue with respect to it, and the contrary is not proved beyond reasonable doubt.

132 Subsection (10) outlines that a person who commits an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding 5 years.

133 Subsection (11) states that a “record” in this clause includes photographic or electronic records.

## Clause 17: Offences committed outside the United Kingdom

134 This clause makes further provision about the offences in clauses 13, 14 and 16.

135 Subsection (1) sets out that clauses 13(1), 14(1) or 16(1) apply to things done both inside or outside the United Kingdom, regardless of the nationality of the person by whom they are done.

136 Subsection (2) provides that where an offence under clauses 13, 14 or 16 is committed outside of the United Kingdom, proceedings for the offence may be taken in the United Kingdom. Subsections (3) and (4) make further provision about the application of subsection (2) in Scotland.

## Endangering another during sea crossing to United Kingdom

### Clause 18: Endangering another during sea crossing to United Kingdom

137 This clause creates a new criminal offence and provides the potential for increased sentencing (compared to certain existing immigration offences under section 24 of the Immigration Act 1971) where a person does an act which endangers the life or lives of others during a sea crossing from France, Belgium or the Netherlands to the United Kingdom and which results in the commission of an existing offence under section 24(A1), (B1), (D1) or (E1) of the Immigration Act 1971.

138 Subsection (2) sets out the conditions under which this offence is committed and defines key expressions by inserting subsections (E1A) and (E1B) into section 24 of the Immigration Act 1971. Subsection (E1A) specifies that to commit the offence, a person must: 1) make a journey by water from France, Belgium or the Netherlands which results in their entry or arrival into the United Kingdom; 2) that journey results in the commission of an offence under subsection (A1), (B1), (D1) or (E1) of section 24 of the Immigration Act 1971; and 3) that at any point during the “relevant period” of the journey, the person acted in a way that caused or created a risk of serious personal injury or death to another person.

139 Subsection (2) also defines key expressions for the purposes of clause (18) by inserting subsection (E1B). Subsection E1B(a) sets out that the “relevant period” of the journey begins when the person committing the offence first left dry land in France, Belgium or the Netherlands for the purpose of making the journey. This includes the process of boarding the first, if more than one, vessel. The “relevant period” ends when the person reaches dry land in the United Kingdom. Subsection (E1B)(a) defines “personal injury” as meaning physical or

psychological injury. Subsection (E1B)(c) explains that land is to be regarded as “dry land” at any particular time if it is not covered by water at that time.

140 Subsection (3) sets out the maximum sentence for the offence. For an offence under clause 18 committed in connection with an offence under subsection (A1) of the Immigration Act 1971, the maximum sentence is six years or a fine or both. For an offence under clause 18 committed in connection with an offence under subsections (B1), (D1) or (E1) of section 24 of the Immigration Act 1971, the maximum sentence is five years or a fine or both.

141 Subsections (4), (5) and (6) make amendments to subsections (3), (4) and (5) of section 24 of the Immigration Act 1971 to include references to subsection (E1A) of clause 18, as inserted by subsection (2).

142 Subsection (7) explains subsection (E1A) as inserted by subsection (2), refers to acts carried out inside or outside the United Kingdom.

143 Subsection (8) states that where a person is on trial charged with an offence under clause 18 and is found not guilty by the relevant court, sheriff or jury of the clause 18 offence, the person may still be found guilty of an offence under subsection section 24(A1), (B1), (D1) or (E1) of section 24 of the Immigration Act 1971, as applicable.

144 Subsection (9) makes consequential amendments to the Immigration Act 1971.

145 Subsection (10) makes consequential amendments to the Nationality, Immigration and Asylum Act 2002.

## **Powers of search etc in relation to electronic devices**

### **Clause 19: Meaning of key expressions**

146 This clause defines key expressions for the purposes of clauses 20-23.

147 Subsection (2) defines a “relevant person” as someone who has entered or arrived in the United Kingdom as per subsection (3) and has not subsequently been granted leave to enter or remain after their arrival.

148 Subsection (3) sets out the types of irregular entry or arrival in the United Kingdom which inform whether a person is a “relevant person” under subsection (2).

149 Subsection (4) defines a ‘relevant article’ as anything which appears to an authorised officer (see subsection (6) for definition of “authorised officer”) to be a thing on which information that relates, or may relate, to the commission (whether in the past or future) of an offence under section 25 or 25A of the Immigration Act 1971 is, or may be stored in electronic form. Section 25 and 25A are the offences of assisting unlawful immigration to a member State or the United Kingdom and helping an asylum-seeker to enter the United Kingdom.

150 Subsection (5) applies section 11(1) of the Immigration Act 1971 to this clause. Section 11(1) (person deemed not to enter United Kingdom before disembarkation, while in controlled area or while under immigration control) provides for the distinction between entering and arriving into the United Kingdom.

151 Subsection (6) defines “authorised officer” as meaning immigration officer and a constable of a police force maintained by a local policing body. There is also a power in clause 25 for the Secretary of State to make regulations to provide that reference in this clause (and in clauses 20, 21 and 22) to an “authorised officer” includes a person described in those regulations.



152 Further detail on a 'relevant article' is provided at clause 26.

## Clause 20: Powers of authorised officers to search for relevant articles

- 153 This clause confers power for an authorised officer to search a relevant person for a relevant article in circumstances where the authorised officer has reasonable grounds to suspect that the person is in possession of a relevant article (subsection (1)).
- 154 Subsection (2) explains that an authorised officer may only search a person under subsection (1) if the person has not previously been searched since the person's entry or arrival as defined in section 19(3).
- 155 Subsection (3) sets out that the power of an authorised person under subsection (1) allows the search of the person's mouth and allows the authorised officer to require the person to remove an outer coat, jacket or glove but no other clothing.
- 156 Subsections (4), (5) and (6) confer powers for an authorised officer to search property, premises and a vehicle or container, for any relevant article, in certain circumstances and set out what those circumstances are.
- 157 Subsection (7) requires a constable to gain authorisation from a police officer of at least the rank of inspector before they may exercise any of the powers under this clause, (7A) If an inspector gives an authorisation under subsection (7), an inspector must ensure that, if they authorise a police constable to use these powers, a superintendent is notified as soon as possible. Subsection (9) enables a constable to use reasonable force in exercising the powers under this clause. (Section 146(1) of the Immigration and Asylum Act 1999 provides that an immigration officer exercising any power conferred on them by the Immigration Acts may, if necessary, use reasonable force.)

## Clause 21: Powers to seize and retain relevant articles

- 158 This clause confers power for an authorised officer to seize any relevant article which has been found on a search under clause 20 or is not found on a search but appears to the officer to be, or to have been, in the possession of a relevant person. Where legally privileged information cannot be separated from the relevant article, clause 24 contains safeguards to ensure it is protected (see clause 24).
- 159 Subsection (2) requires a constable to gain authorisation from a police officer of at least the rank of inspector before exercising the power to seize under this clause, (2A) If an inspector gives an authorisation under subsection (2), an inspector must ensure that, if they authorise a police constable to use these powers, a superintendent is notified as soon as possible.
- 160 Subsection (3) enables a constable to use reasonable force when exercising the powers under this clause. (For the power of an immigration officer to use reasonable force, see explanation in relation to clause 20 above.)
- 161 Subsection (4) enables a constable to give an article seized under this section, to an immigration officer of the Secretary of State.
- 162 Subsection (5) provides that an authorised officer or the Secretary of State may retain an article for as long as is considered necessary for the purposes of accessing, examining or copying the information, in line with clause 23 and how it must, subject to the exceptions set out, be returned once the retention is no longer considered necessary for those purposes.
- 163 Subsection (6) sets out to whom the relevant article must be returned under subsection (5).

164 Subsections (7), (8) and (9) set out the process for disposal of a relevant article where it cannot be returned to a person in accordance with subsection (6) and is not required to be dealt with under clause 22.

## Clause 22: Duty to pass on items seized under section 21

165 This clause makes provision in relation to an immigration officer passing on a relevant article to other persons, where there is a reasonable belief that the article or information stored on it has been obtained in consequence of the commission of, or is evidence in relation to, an offence other than the immigration offence (defined as the “relevant offence”) (subsection (1)).

166 Subsection (2) places a duty on an immigration officer, who has formed the belief under subsection 1(b), to notify a person who has the functions to investigate the relevant offence.

167 Subsection (3) provides an immigration officer with discretion to notify a person who has the functions to investigate the relevant offence, where the immigration officer reasonably believes the article also relates to an immigration offence.

168 Subsection (4) requires that a person notified under this clause must as soon as reasonably practicable, inform the immigration officer of whether they will accept the relevant article.

169 Subsection (5) sets out the circumstances in which a person notified under this clause can refuse to accept the relevant article. Subsection (6) confirms that if the person notified agrees to accept the article, it must be passed to the person as soon as reasonably practicable. Subsection (7) ensures that where a relevant article is passed on, any provision of an enactment which apply to items seized or taken away by the person applies to the relevant article as if it had been seized or taken away by the person for the purposes of the investigation of the relevant offence. Subsection (8) explains that if a person informs an immigration officer that they will not accept the relevant article, by virtue of subsection (5)(a), the immigration officer must decide whether to continue to retain the article under clause 21(5).

170 Subsection (9) sets out the options available to immigration officers if a relevant article is not accepted because subsection (5)(b) or (c) applies.

171 Subsection (10) confirms that where a relevant article has been obtained in consequence of more than one offence, other than an immigration offence, reference to the relevant offence applies to any of those offences.

172 Subsection (11) explains that functions conferred or imposed by this clause on an immigration officer may be exercised by any other immigration officer.

173 Subsection (12) confirms that this clause applies to a relevant article retained under clause 21(5)(a) by the Secretary of State in the same way as it applies to an immigration officer.

174 Subsection (13) confirms that references to an immigration officer, except for subsection (11), are to be read as references to the Secretary of State.

175 Subsection (14) defines “enactment” and “immigration offence”, for the purposes of this clause.

## Clause 23: Powers to access, copy and use information stored on relevant articles

176 This clause confers power for an authorised officer or the Secretary of State to access and examine any information stored on a relevant article (that is retained under clause 21(5)(a)) copy and retain information that relates, or may relate, to the commission (whether in the past or future) of an offence under section 25 or 25A of the Immigration Act 1971; and use any

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information retained for any purpose relating to the prevention, detection, investigation, or prosecution of such an offence.

- 177 Subsection (2) requires a constable to gain authorisation from a police officer of at least the rank of inspector before they may exercise any of the powers under this clause,(3) If an inspector gives an authorisation under subsection (2), an inspector must ensure that, if they authorise a police constable to use these powers, a superintendent is notified as soon as possible.

#### Clause 24: Amendment of the Criminal Justice and Police Act 2001

- 178 This clause amends the Criminal Justice and Police Act 2001 so that provisions relating, amongst other things, to the protection of legally privileged material and excluded and special material apply when relevant articles are seized under clauses 20 to 23.

#### Clause 25: Extension of powers to other persons

- 179 This clause provides that the Secretary of State may by regulations (subject to the negative procedure) make provision for the powers available to authorised officers in clauses 19, 20, 21 and 23 to be available to other people, including persons designated by the Secretary of State.

#### Clause 26: Meaning of other expressions

- 180 This clause defines “container”, “deportation order”, “electronic travel authorisation”, “entry clearance”, “immigration officer”, immigration rules”, “premises”, “ship” and “vehicle” for the purposes of clauses 20 to 23.

### Sharing of information

#### Clause 27: Supply of customs information by HMRC

- 181 His Majesty’s Revenue and Customs (HMRC) exercises a range of statutory customs functions in respect of both the collection and management of customs duty and the control and administration of imports/exports more generally. The exercise of these functions requires the collection and appropriate management of information. These include various functions relating to: the collection and management of customs duty; monitoring and controlling the movement of goods, including for purposes relating to safety and security and the customs enforcement of intellectual property rights; and the control of cash entering or leaving the UK.
- 182 HMRC’s statutory framework on confidentiality requires a legal basis to be able to lawfully disclose HMRC information held in connection with departmental functions. This section will provide a suitable legal basis for disclosure by HMRC of information held in relation to its customs functions to a range of recipients, including UK Ministers, government departments and police, and certain international partners, as described in the clause. The information shared may extend to other taxes and duties apart from customs duty (for example, VAT and excise duty) but only to the extent it is held in relation to HMRC’s customs functions. For example, the measure will allow HMRC to share VAT information relating to the import of goods that is captured as part of their customs functions, but not other VAT information submitted by businesses on their VAT returns.
- 183 This clause will allow HMRC to share customs information in support of functions exercised by the recipients, including those relating to ensuring the security of UK borders. UK Ministers, government departments and police will be able to re-use customs information for any of their functions, and further share it for the limited purposes specified in clause 28. All disclosures permitted by these sections will remain subject to data protection legislation, and

disclosures outside of the section's permissions will be restricted by reference to existing criminal penalties under the Commissioners for Revenue and Customs Act 2005.

- 184 Subsection (1), gives HMRC, or anyone acting on HMRC's behalf, the power to supply information that HMRC holds in connection with its customs functions. The power is limited to supplying information to persons within section 27(3).
- 185 Subsection (2) defines "customs functions" as HMRC's functions in their capacity as a customs service. It includes in particular their functions in that capacity relating to (a) the movement of goods or cash into, out of or within the United Kingdom, and (b) the imposition, enforcement or other regulation of any tax or duty relating to such movement of goods.
- 186 The information may be shared with both UK recipients and non-UK recipients, as stated in subsection (3). UK recipients with whom information may be shared include a Minister of the Crown or a government department and a UK authorised person. Information may also be shared to specified persons within the Home Office, such as the Border Security Commander and the Director of Border Revenue (see subsection (3)(b)-(e)).
- 187 Regarding "Minister of the Crown", this has the same meaning, as stated in subsection (6), as in the Ministers of the Crown Act 1975 (see section 8(1) of that Act): "[T]he holder of an office in Her Majesty's Government in the United Kingdom, and includes the Treasury, the Board of Trade and the Defence Council." Regarding "government department", this is defined at subsection (5), in such a way that includes a body exercising statutory functions, such as the National Crime Agency, and the governments of the devolved administrations. Regarding, "UK authorised person", these UK persons are specified in section 33(3), and are police personnel.
- 188 Non-UK recipients with whom information may be shared, as stated in subsection (3), are: (g) A government of a country or territory outside the United Kingdom; (h) A person in a country or territory outside the United Kingdom with public functions either (i) relating to the movement of goods or cash into or out of that country or territory, or (ii) relating to the imposition, enforcement or other regulation of any tax or duty relating to such movement of goods; and (i) An international organisation to which subsection (3) applies.
- 189 Sharing information with international organisations is further clarified by subsection (4) which has the practical effect of limiting the sharing of information under 27(1) to international organisations that have functions relating to: (a) the movement of goods or cash across international borders; or if an international arrangement makes provision for cooperation between the organisation and HMRC. "International arrangement" is defined, in subsection (5), as "an international agreement or arrangement to which any of the following is a party: (a) the United Kingdom; (b) His Majesty's Government; (c) HMRC; (d) the Commissioners for His Majesty's Revenue and Customs."

190 Subsection (5) defines various terms for the purposes of this section.

## Clause 28: Use and disclosure of information supplied under section 27

- 191 This section regulates how the information supplied under section 27 may be used and disclosed by its recipients.
- 192 Subsection (1) sets a general rule that a person who receives information under section 27(1) may (a) use it only for the purposes for which it was supplied, and (b) not further disclose it without the consent of the Commissioners for His Majesty's Revenue and Customs (which may be general or specific). However, this general rule is subject to the following provisions, which enable certain recipients to use and disclose information more flexibly.

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- 193 Subsection (2) relates to information that is shared under section 27(1) with a person listed within section 27(3)(a) to (f). Such information may be used for the purposes of any of the recipient's functions. For example, information supplied by HMRC to the Secretary of State for use for immigration purposes can also be used by the Secretary of State for any of her other functions.
- 194 Persons to whom subsection (3) applies (being either the Secretary of State for the Home Department or other specified persons within the Home Office, as per subsection (4)) are able to supply information to each other for the purpose of any of the recipient's functions. The effect of this is that information shared within the Home Office can be used for any Home Office function, rather than being limited to the functions of the initial recipient. For example, information shared with the Secretary of State for the Home Department (SSHD) under section 27(1) can be further supplied to the Director for Border Revenue for use for any of that post holder's functions, even those not exercisable by the SSHD.
- 195 Subsection (5) is a saving provision that clarifies that, should the general customs functions exercisable by the Secretary of State for the Home Department transfer to another Secretary of State, then subsection (4) should be read at that time as including a reference to the Secretary of State to whom those general customs functions are exercisable.
- 196 Subsection (6) clarifies that persons within subsection (3)(b) to (e) of section 27 (i.e., specified persons within the Home Office) to whom information is supplied under section 27(1) or 28(3) are, for the purposes of subsections (7) to (10), which relate to the onward supply of information, to be treated as also having had the information supplied to them in their capacity as an official of the Secretary of State.
- 197 Subsection (7) concerns persons listed within section 27(3)(a) or (f). To the extent that this is not already permitted by subsection (3), these persons may supply information received under section 27(1) to other persons likewise listed within section 27(3)(a) to (f) for use for the purposes listed at subsection (7)(a) to (g). These purposes broadly related to border security and law enforcement.
- 198 Subsection (8) provides that the Secretary of State by whom immigration and nationality functions are exercisable may also supply information received under section 27(1) to any person (whether or not within the United Kingdom) for use for the purposes listed at subsection (8)(a) to (b). Note that subsection (13) provides further definitions for the terms used here, including a definition for "immigration and nationality functions".
- 199 Subsection (9) provides that the Secretary of the State by whom general customs functions are exercisable may also supply information received under section 27(1) to any person (whether or not within the United Kingdom) for use for the purposes listed at subsection (9)(a) to (b).
- 200 Subsection (10) provides that information may be supplied to any person in pursuance of an order of a court if the information is received under or by virtue of: (a) section 27(1); (b) section 28(1)(b), (7), (8) or (9); or (c) section 29(3) or (4)(b).
- 201 Subsection (11) provides that section 28 does not prevent the disclosure of information to HMRC. While subsection (12) confirms that section 28 is subject to section 29.

## Clause 29: Further provision about use and disclosure of information under section 28

- 202 This clause sets out how information supplied under clause 28 may be used and disclosed by recipients.

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- 203 Subsection (1) states that sections 28(2), (7), (8) or (9), which permit the use and onward supply of information, do not apply if the use or supply of the information would breach any restrictions that were imposed by HMRC, or a person acting on HMRC's behalf, when the information was supplied under section 27(1).
- 204 Subsections (2) to (4) clarify the restrictions on recipients regarding the use and onward disclosure of information received under section 28.
- 205 Subsection (2) restricts a person who receives information under or by virtue of section 28(1)(b), (7), (8) or (9) or by virtue of 29(3) or (4)(b) to only using it for the purposes for which it was supplied to them. Subsection (3) further restricts such a person so that they may not further disclose this information without the consent of the Commissioners for His Majesty's Revenue and Customs (which may be general or specific).
- 206 Subsection (4) provides that any person who receives information under section 28(3) may not further disclose it except as permitted by subsection (3), (7), (8), (9) or (10) of that section or with the consent of the Commissioners for His Majesty's Revenue and Customs (which may be general or specific). In the case of information received by virtue of 29(4) itself, onward disclosure is only permitted with the consent of the Commissioners for His Majesty's Revenue and Customs.
- 207 Subsection (5) adds further safeguards regarding the onward disclosure and receipt of information. Any person who supplies information in reliance on section 28(1)(b), (7), (8) or (9), or section 29(3) or (4)(b) must notify the recipient(s) that the limitations and prohibitions that apply to the information by virtue of section 29.
- 208 Subsections (6) and (7) extend the existing offence of wrongful disclosure so that it applies in circumstances where a person discloses information, relating to a person whose identity is specified in, or can be deduced from the disclosure, in contravention of subsection (1)(b) of section 28 or subsection (3) or (4)(b) of section 29. Subsection (7) provides that the offence applies in relation to such disclosures as it applies in relation to a disclosure in contravention of section 20(9) of that Act.
- 209 Subsection (8) clarifies that clause 29 does not prevent the disclosure of information to HMRC.

### Clause 30: Supply of trailer registration information

- 210 Clause 30 relates to the supply of trailer registration information by the Secretary of State for Transport.
- 211 Subsection (1) establishes a discretionary power for the Secretary of State for Transport to supply that information in accordance with subsections (3) to (8). Subsection (2) defines the meaning of "trailer registration information" as information held by the Secretary of State for Transport under Part 2 of the Haulage Permits and Trailer Registration Act 2018.
- 212 Subsection (3) makes provision for trailer registration information to be supplied to the Secretary of State for the Home Department for one or more of the purposes listed in subparagraph (a) to (f). These are (a) immigration purposes; (b) the law enforcement purposes; (c) human welfare purposes; (d) purposes connected with the exercise of functions under the Proceeds of Crime Act 2002, (e) safeguarding national security; and (f) responding to an emergency.
- 213 Subsection (4) makes provision for the trailer registration information being supplied to the Secretary of State by whom general customs functions are exercisable, for use in connection with those functions.

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- 214 Subsections (5) and (6) make provision for the trailer registration information being supplied to the NCA and HMRC respectively for use in connection with any of their functions.
- 215 Subsection (7) makes provision for the trailer registration information being supplied to a “UK authorised person” and a “UK authorising officer” (limited to persons engaged in policing by subsections 33(3) and (4)) for use in connection with; (a) “specified purposes related to policing” (subsection 33(8) confers regulation making powers); (b) the law enforcement purposes; and (c) safeguarding national security.
- 216 Subsection (8) makes provision for the trailer registration information being supplied to a “non-UK authorised person” and a “non-UK authorising officer” (limited to specified persons concerned with law enforcement, customs and immigration in Guernsey, Jersey, the Isle of Man and Gibraltar, by subsections 33(6) and (7)) for use in connection with; (a) the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security; and (b) purposes connected with the exercise of any statutory functions of the recipient relating to customs, excise, immigration or the proceeds of crime.
- 217 Subsection (9) enables the Secretary of State to supply information received under subsection (3) to; (a) an immigration officer; (b) a designated customs official; and (c) the Border Security Commander, for use in connection with any of the purposes listed in subsection (3)(a) to (f). Subsection (10) operates in the same way so that information received by the Secretary of State under subsection (4) may be supplied by them to; (a) the Director of Border Revenue; and (b) a designated customs official, in connection with a customs function exercisable by that person. These ensure fluidity of information sharing within the Home Office.
- 218 Subsection (11) is a saving provision that clarifies that, should the general customs functions exercisable by the Secretary of State for the Home Department under subsection (3) transfer to another Secretary of State, then the powers under subsection (3) should be read as the Secretary of State to whom those general customs functions are transferred.

### Clause 31: Onwards sharing of information shared under section 30

- 219 Clause 31 regulates the onward sharing of information supplied to persons under clause 30 specifically with respect to the Home Office, and a “UK authorised person” and a “UK authorising officer”; it is envisaged that any onward sharing will be on a case-by-case basis. It does not regulate onward sharing by the NCA and HMRC because “as creatures of statute” safeguards are provided for elsewhere. The same applies with respect to the Crown Dependencies and Gibraltar (for any information received under subsection 30(8)) as those territories are governed by their own legislation.
- 220 Subsection (1)(a) makes provision for a person who receives information under subsections 30(3), (4), (9) or (10), that is, the Secretary of State, an immigration officer; a designated customs official; the Border Security Commander; and the Director of Border Revenue, to supply that information to a person exercising public functions (whether or not within the United Kingdom) for use in connection with any of the purposes listed in (i) to (viii). These are; (i) immigration purposes; (ii) the purposes of exercising a customs function; (iii) specified purposes related to policing; (iv) the law enforcement purposes; (v) human welfare purposes; (vi) safeguarding national security; (vii) responding to an emergency; and (viii) purposes connected with civil or criminal legal proceedings or a criminal investigation (including proceedings or an investigation outside the United Kingdom). Subsection (1)(b) makes provision for those persons to supply that information to another person in pursuance of; (i)



an order of a court; or (ii) an agreement to which the United Kingdom or His Majesty's Government is a party.

- 221 Subsection (2) extends the disclosure powers in subsection (1)(a) and (b)(i) to a "UK authorised person" and a "UK authorising officer" who receives information under subsection 30(7).

### Clause 32: Sections 27 to 31: general provision about disclosure

- 222 Clause 32 makes general provision about disclosure with respect to clauses (27) to (31). Subsection (1) clarifies that nothing in clauses (27) to (31) limits how information may be supplied apart from those sections. Subsection (2) clarifies that nothing in clauses (27) to (31) authorises disclosure where it would otherwise contravene data protection legislation or the investigatory powers legislation in the UK but that in determining whether a disclosure would do either of those things, the powers conferred by those sections are to be considered. Subsection (3) defines the meanings of "the data protection legislation" by reference to the Data Protection Act 2018; and "the investigatory powers legislation" by reference to the Investigatory Powers Act 2016.

### Clause 33: Sections 27 to 31: interpretation

- 223 Clause 33 is concerned with the interpretation of clauses (27) to (31). Subsection (1) states this as its purpose.
- 224 Subsection (2) defines references to persons as having the meanings specified, including with reference to any acts (as applicable) regarding; "the Border Security Commander"; a "designated customs official"; "the Director of Border Revenue"; "HMRC"; and an "immigration officer".
- 225 Subsection (3) defines a "UK authorised person" for the purposes of any information supplied under (a) section 27 (supply of customs information by HMRC) and (b) section 30 (supply of trailer registration information by the Secretary of State for Transport) and section 31 (onwards sharing of information shared under section 30), where a person in the first column of the subsequent table may be authorised to receive the information by the authorising officer specified in the corresponding entry in the second column of the table.
- 226 Row 1 of column 1 defines the authorised person as "a constable or other person who is under the direction and control of a person who has the direction and control of a body of constables". With respect to constables, any constable, be they in a UK territorial police force, in a UK specialist police force (British Transport Police, Ministry of Defence Police and the Civil Nuclear Constabulary), a UK Ports Police body, and the Mersey Tunnels Police would be able to access trailer registration information if they were authorised to do so by the "authorising officer". Ports police constables include those sworn under section 79 of the Harbours, Docks and Piers Clauses Act 1847, additionally under the Mersey Docks and Harbour (Police) Order 1975 for the Port of Liverpool Police; under section 154 of the Port of London Act 1968 for the Port of Tilbury Police; and under section 103 of the Tees and Hartlepoons Port Authority Act 1966 for the Teesport and Hartlepool Harbour Police. Mersey Tunnels Police are sworn under section 105(2) of the County of Merseyside Act 1980. Parks and cathedral constables are not within scope.
- 227 The "other person" within the formulation refers to a person who might otherwise be described as "police staff" or "police civilian staff". Many police forces employ police staff as analysts or to work in control rooms. While there may for example be sworn constables in control rooms, it is not the intention to limit them to retaining sworn constables when it would

be operationally more efficient for these roles to be undertaken by unwarranted police staff. This definition enables trailer registration information to be supplied not only to persons who are employed by the police pursuant to an employment contract (police civilian staff in the conventional sense), but also police volunteers and contractors, provided they are authorised to receive the information. This includes civil servants such as those employed by the Ministry of Defence and assigned to the MoD Police, those provided under section 4 of the Police (Northern Ireland) Act 2000 assigned to the Police Service of Northern Ireland, and NCA officers on secondment to a police force; subject in each case to being duly authorised by the authorising officer of that body of constables.

- 228 In row 1 of column 2 the “authorising officer” for a constable or other person in column 1 is described as “the person under whose direction and control the constable or other person is”. It is designed to take account of police bodies not led by a “Commissioner”, a “Chief Constable” or a “Chief Officer” used elsewhere (as these have specific legal meanings) that exclude the commanders of Ports Police and the Mersey Tunnels Police. The formulation is expressly designed to include these latter types of police (as well as the former), critical as they are to policing maritime ports, and designated roads infrastructure near the Port of Liverpool.
- 229 The Service Police provide investigatory (including for crime) and policing services to the military. Row 2 of column 1 enables “a member of a service police force or other person” (“other person” such as a civil servant or a contractor) who is under the direction and control of the relevant Provost Marshal (of the Royal Navy Police, the Royal Military Police, the Royal Air Force Police, and the tri-service serious crime unit); and authorised to access to the data. Row 2 of column 2 defines the authorising officer as “the relevant Provost Marshal”.
- 230 Subsection (4) defines “constable” as being inclusive of special constable; and defines “relevant Provost Marshal” and “service police force” with respect to the Armed Forces Act 2006.
- 231 Subsection (5) defines a “UK authorising officer” as (a) a person having the direction and control of a body of constables, and (b) a Provost Marshal.
- 232 Subsections (6) and (7) define a “non-UK authorised person” and a “non-UK authorising officer” referred in subsection 30(8) with respect to Jersey, Guernsey, the Isle of Man and Gibraltar where the “non-UK authorised person” in the first column of the table following (6) may be authorised by a “non-UK authorising officer” specified in the corresponding entry in the second column, to receive information supplied under section 30. The listed persons undertake work corresponding with their counterparts in the UK as specified in subsections 30(3) to (7) with respect to policing, law enforcement, customs, and immigration.
- 233 Subsection (8) defines the meanings of purposes or functions referred in sections 27-31 with respect to; a “customs function”; a “general customs function”; “HMRC functions”; “human welfare purposes”; “immigration purposes”; “the law enforcement purposes”; and “NCA functions”. Subsection (8) also confers a regulation making power on the Secretary of State to define “specified purposes related to policing”. Before making regulations under subsection (8), subsection (9) places a duty upon the Secretary of State to consult such of the following persons as they consider appropriate; (a) any person appearing to them to represent the views of a body of constables in the United Kingdom; (b) the Scottish Ministers; and (c) the Department of Justice in Northern Ireland.

## **Provision of biometric information from evacuees etc.**

### **Clause 34: Provision of biometric information from evacuees etc.**

- 234 This clause provides a power for authorised persons to take biometric information where the government is in the process of facilitating their exit from a state or territory. The provision provides operational flexibility in instances where the government may wish to facilitate the exit from one country into another (including but not limited to crisis or evacuation scenarios).
- 235 Subsection (1) grants authorised persons the power to take biometric information, including fingerprints and facial images, from individuals to whom the section applies.
- 236 Subsection (2) outlines the conditions under which this power can be exercised, namely that the authorised person reasonably believes the individual is subject to immigration control; and the government is in the process of facilitating the individual's departure from a state or territory.
- 237 Subsection (3) establishes additional safeguards for the taking of biometric information from children under the age of 16. It requires that a parent, guardian, or a responsible adult must be present when biometric information is taken, ensuring that the child's welfare is protected.
- 238 Subsection (4) ensures that authorised persons or officers of the Secretary of State cannot act as the responsible adult for the purposes of subsection (3), maintaining impartiality in the process.
- 239 Subsection (7) confirms that "taking biometric information" includes recording such information.
- 240 The provision explicitly allows biometric information to be taken outside the UK to address operational requirements in international evacuation efforts, where urgent action is needed to facilitate exit of one country and entry to another, or where access to secure UK facilities is not immediately feasible.

### **Clause 35: Use and retention of information taken under section 34**

- 241 Subsection (1) requires that biometric information taken under Section 30 must be provided to the Secretary of State as soon as possible.
- 242 Subsection (2) sets out the principal purposes for which the Secretary of State can use the biometric information, namely immigration and nationality purposes, and law enforcement and national security purposes.
- 243 Subsection (3) and (4) confirm that the biometric information can only be kept by the Secretary of State if it is needed for the above purposes and must be deleted after 5 years, unless it can be held under another power.
- 244 Subsection (6) provides the Secretary of State can also use the information to identify whose exit has been facilitated.

## **Provision of biometric information at ports in Scotland**

### **Clause 36: Provision of biometric information at ports in Scotland**

- 245 This clause amends Schedule 8 Terrorism Act 2000 (TACT) and Schedule 3 to the Counter-Terrorism and Border Security Act 2019 ("CTBSA"), to enable the biometrics of persons detained in Scotland under Schedule 3 CTBSA or 7 TACT to be taken at ports, thereby bringing the position in Scotland into line with that in England, Wales and Northern Ireland.

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- 246 Schedules 7 & 3 of those Acts allow Counter-Terrorism Police Officers to detect, disrupt and deter terrorism and hostile activity at the border. They allow an Examining Officer (that is a constable or a designated immigration or customs officer) to stop, question, search and detain a person at a port or at the border area in Northern Ireland, for the purpose of determining whether the person appears to be a person who is, or has been, engaged in terrorism or hostile activity respectively. An Examining Officer may stop and question a person whether or not there are grounds for suspecting that the person is or has been engaged in terrorism or hostile activity.
- 247 In England, Wales and Northern Ireland paragraph 10 of Schedule 8 to the TACT and paragraph 34 of Schedule 3 to the CTBSA allow Examining Officers to take fingerprints and non-intimate DNA samples (“biometrics”) from individuals who have been detained under these powers while they are at the port.
- 248 The powers for taking these biometrics in Scotland are contained in paragraph 20 of Schedule 8 to the TACT and paragraph 42 of Schedule 3 to the CTBSA. Amongst other things, a key difference is the requirement for those detained under Schedules 3 or 7 in Scotland to be taken to a police station in order to have their biometrics taken. This clause enables the biometrics of persons detained in Scotland under Schedule 3 or 7 to be taken at ports, thereby bringing the position in Scotland into line with that in England, Wales and Northern Ireland.
- 249 The exercise of the powers under Schedule 7 to TACT and Schedule 3 to the CTBSA is subject to codes of practice issued by the Secretary of State; these will be updated ahead of commencement of this clause to reflect the changes made to the power to take biometrics in Scotland.

## Part 2: Asylum and Immigration

### Repeal of immigration legislation

#### Clause 37: Repeal of the Safety of Rwanda (Asylum and Immigration) Act 2024

- 250 This clause repeals in its entirety the Safety of Rwanda Act such that it will no longer have effect once this Bill is passed.

#### Clause 38: Repeal of certain provisions of the Illegal Migration Act 2023

- 251 Subsection (1) lists the provisions in the Illegal Migration Act 2023 which this Bill repeals. The provisions not being repealed are: section 12 (period for which persons may be detained); section 29 (modern slavery, amendment of section 63 of the Nationality and Borders Act 2022); section 52 (Judges of First-tier Tribunal and Upper Tribunal); section 59 (inadmissibility of certain asylum and human rights claims); section 60 (cap on number of entrants using safe and legal routes); section 62 (credibility of claimant: concealment of information etc); and sections 63 to 65 and 67 to 69 (relevant final provisions of the Illegal Migration Act).
- 252 Subsection (2) provides that section 8AA of the Immigration Act 1971 (as inserted by the section 30(3) of the Illegal Migration Act 2023) is to be treated as having never been in force. Section 8AA originally came into effect on the day the Illegal Migration Act was passed (20 July 2023) and was retrospective in effect from the day the Act was introduced into Parliament (07 March 2023). The retrospective effect caused complexity for the immigration system and created a risk that the Home Office was acting in a manner inconsistent with legislation; potentially granting leave ultra vires to those who should be subject to the bars on obtaining immigration status.

253 The Illegal Migration Act 2023 (Amendment) Regulations 2024 removed the retrospective effect of the Act to address this risk. Specifying that section 8AA is to be treated as never having been in force will ensure that any leave which may have been granted ultra vires whilst section 8AA had effect is valid.

### Clause 39: Sections 37 and 38: consequential amendments

254 This clause makes consequential amendments necessary as a result of the repeal of the provisions of the Illegal Migration Act 2023 (clause 38) and the repeal of the Safety of Rwanda (Asylum and Immigration) Act 2024 (clause 37).

## The Immigration Services Commissioner

### Clause 40: Immigration advisers and immigration service providers

#### Schedule 1

255 Schedule 1 amends Schedule 5 of the Immigration and Asylum Act 1999 to set out that the Commissioner is to hold office for a term not exceeding five years. This does not affect paragraph 12(3) which states that the Commissioner is eligible for re-appointment when their term of office ends. This amendment is needed because there is currently no power to make short term or interim appointments should the need arise in line with other Public Appointments.

256 The current regulatory regime is based upon there being an Immigration Services Commissioner and Deputy in post. Therefore, an amendment is also made to paragraph 16(1) to set out that the Commissioner may appoint a person to act as Deputy Commissioner. Should both the roles be vacant simultaneously, the majority of ISC regulatory functions could not be discharged. Paragraphs 17A(1) and (2) provide that a member of the Commissioner's staff nominated by the Secretary of State may act in the Commissioner's place in certain circumstances. This provision is not designed to replace the Secretary of State's provision to appoint a Deputy Commissioner, but to be used in extremis to avoid a gap in regulatory oversight.

257 Sections 2 and 3 will create the power to amend the definition of 'relevant matters', set out at section 82(1) IAA 1999 by regulations. This will allow for the list of 'relevant matters', that the Immigration Services Commissioner (Commissioner) has regulatory oversight of, to become flexible and adapt with the changing landscape of immigration advice.

258 Sections 2 and 3 concern section 82 of Part V of the Immigration and Asylum Act 1999 which is amended to set out that the definition of "relevant matters", in connection with the provision of immigration advice and/or services, may be amended by the Secretary of State by regulations.

259 This will introduce a Henry VIII power which means that primary legislation can be amended by secondary legislation. These regulations are to be laid before Parliament and approved by a resolution of each House.

260 Sections 4, 5 and 6 make amendments to Part V and Schedule 6 IAA 1999.

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- 261 Section 4 amends section 84 of the IAA 1999 to confirm that a person suspended under new paragraph 4AA or 4B of that Schedule is not to be treated as a registered person for the purposes of section 84 IAA 1999 and makes provisions for the recording of the suspension on the Commissioner's register.
- 262 Section 5 inserts five new subsections into section 87 IAA 1999 (appeals to First-tier Tribunal):
- 263 Subsection (3AA) provides that the Commissioner's decision to cancel a person's registration under paragraph 4A(e) of Schedule 6 IAA 1999 is upheld whilst an appeal against that decision is running where conditions A or B are met (see below).
- 264 Subsection (3AB) defines 'Condition A'. This is where the Commissioner notifies a person to which a decision under paragraph 4A(e) of Schedule 6 IAA 1999 has been made that the Commissioner considered that they are acting or have acted in a way which creates a risk of serious harm to persons seeking immigration advice or services or creates a risk to the system of immigration control in the UK. Such a decision to cancel their registration has effect from the time in the notice.
- 265 Subsection (3AC) defines Condition B as a decision to cancel a person's registration either wholly or partly on the basis that they have been convicted of an offence involving dishonesty or deception, or of an indictable offence.
- 266 Subsection (3D) provides that where a decision has been made under paragraph 4A(e) of Schedule 6 IAA 1999, section 87(3B) of the IAA 1999 does not apply where Condition B has been met. In other words, where a person has been convicted of an offence involving dishonesty/deception or an indictable offence, the Tribunal Procedure Rules cannot permit the First-tier Tribunal to direct the 'relevant decision' to have no or limited effect. This upholds the Commissioner's 'relevant decision' during the appeal.
- 267 Subsection (4A) provides a non-exhaustive definition of the types of activities which constitute creating a "a risk of serious harm to the system of immigration control in the United Kingdom".
- 268 Section 6 makes amendments to Schedule 6 of the IAA 1999, inserting subparagraph 4AA and amending paragraph 4B.
- 269 Subparagraph 4AA(1) gives the Commissioner power to suspend registration where they have reason to suspect the registered person is acting or has acted in a way which creates a risk of serious harm to persons seeking immigration advice or services, or creates a risk to the system of immigration control in the UK where it is deemed necessary to suspend that person's registration.
- 270 Subparagraph 4AA(2) allows the Commissioner to cancel a suspension decision under 4AA(1) where the Commissioner is no longer satisfied that a person is acting or has acted in a way which creates a risk of serious harm to persons seeking immigration advice or services, or creates a risk to the system of immigration control in the UK and that such suspension of a person's registration is necessary.

- 271 Subparagraph (3) requires the Commissioner to consider whether to cancel the suspension decision under 4AA (1) periodically (before the end of the first 7 working days beginning the working day after the day that the Commissioner issued the suspension notice, and each subsequent 7 working days thereafter). Subparagraph(4) introduces the right of appeal against the suspension decision.
- 272 Subparagraph 4AA(5) provides a non-exhaustive list of what is meant by conduct creating a serious risk of harm to the system of immigration control in the UK. Subparagraph4AA(6) defines “working day” in this context.
- 273 Subparagraph 4B(1) of Schedule 6 IAA 1999 is substituted with a new paragraph to reflect that the Commissioner may, by notice in writing, suspend a registered person where that person is charged with an offence involving dishonesty or deception, an indictable offence, or an offence under s.25 or s.26 (1)(d) or (g) of the Immigration Act 1971.
- 274 Subparagraph 4B(1A) sets out that the Commissioner may cancel the suspension by providing notice in writing to the suspended person. Subparagraph 4B(1B) gives a right of appeal to the First-tier Tribunal to a person whose registration is suspended under sub-paragraph 4B(1).
- 275 Subparagraph 4C is inserted to clarify that a person whose registration is suspended under 4AA or 4B is not to be treated as a registered person for the purposes of section 84 IAA 1999. It also makes provisions for the way in which the Commissioner shall record the suspension of a person’s registration (or where such suspension is ceased).
- 276 Section 7 provides that a person’s entitlement to meet the definition of a qualified person by virtue of being supervised under section 84(2)(e) of the IAA 1999 is subject to new section 84A and regulations under new section 84B.
- 277 Section 8 inserts new subsection 84A to provide circumstances under which a person may not be entitled to provide immigration advice under supervision as a qualified person by virtue of section 84(2)(e) IAA 1999. Circumstances include, by reference to sanctions under the IAA 1999, where a person is disqualified under paragraph 4 of Schedule 6 (convicted of certain immigration offences), suspended under new paragraph 4AA (on grounds of risk of serious harm) of Schedule 6 IAA 1999, or 4B of Schedule 6 IAA 1999 (charged with certain offences).
- 278 Subsection 84A(2) provides that a person is not entitled to provide immigration advice or services under supervision, where upon appealing a decision by the Commissioner to cancel their registration under paragraph 4A(e) of Schedule 6 IAA 1999 (no longer competent or otherwise unfit) they were found by the Commissioner to have met the criteria of condition A (risk of causing serious harm) within new section 87(3AB) IAA 1999, causing the Commissioner to cancel their registration with immediate effect. The prevention from acting under supervision as a result of the notice given under section 87(3AB) IAA 1999 lasts for 12 months from the time specified in the notice which is the “relevant period” defined in new paragraph 84A(3).
- 279 Subsection 84A(4) establishes that preventing a person from acting under supervision as a result Commissioner’s decision under section 87(3AB) IAA 1999 can be disapplied where either

the Commissioner decides to register the person or continue their registration, or if the cancellation of that person's registration is overturned on appeal (unless the effect of a further appeal reinstates that person's registration cancellation).

280 Subsection 84A(5) provides that a person is not entitled to provide immigration advice or services under supervision if they have appealed a decision by the Commissioner to cancel their registration under paragraph 4A(e) of Schedule 6 IAA 1999 (no longer competent or otherwise unfit), where they were found by the Commissioner to have met the criteria of condition B within new section 87(3AC) IAA 1999 (conviction of certain offences), where their registration was cancelled with immediate effect as a result.

281 Subsection 84A(6) sets out that the prevention of a person from being able to provide immigration advice or services under supervision following a decision to cancel their registration under section 87(3AC) IAA 1999 does not apply if the offence is quashed or set aside, or if the Commissioner decides to register the person, or if the person's registration cancellation is overturned on appeal (unless the effect of a further appeal reinstates that person's registration cancellation).

282 Subsection 84A(7) provides that a person other than those to which subsections 84A(1), (2), or (5) apply is entitled to act under supervision where they have received any of the sanctions listed in subsection 84A(8), provided that they disclose those sanctions to their prospective supervisor prior to entering into a supervision arrangement. Failing to disclose certain those sanctions will mean that the person does not meet the definition of a "qualified person" under section 84(2)(e) IAA 1999, and, if they continue to act under supervision, will have therefore committed an offence under s.91(1) IAA 1999.

283 Subsection 84A(8) lists the sanctions received by a person under the IAA 1999 which they would need to be disclosed to their supervisor prior to them entering into a supervision arrangement. They include certain sanctions such as; directions by the First-Tier Tribunal or a disciplinary body with the effect of varying, restricting or suspending someone's ability to provide immigration advice or services, receipt of a monetary penalty under new section 92C, or the decision by the Commissioner to cancel or suspend a person's registration under new paragraph 4AA or 4B of Schedule 6 IAA 1999.

284 Subsection 84A(9) provides that a person will not be required to disclose the sanctions specified under subsection (7) to their supervisor where, prior to entering into the supervision arrangement, the sanction had been reversed, cancelled quashed, overturned on appeal (where such sanction decision had not been reinstated as a result of further appeal). Disclosure is also not required where a person was sanctioned due to them having been charged with an offence under paragraph 4B of Schedule 6 IAA 1999 but that person is acquitted of the offence, the charge against them is withdrawn, or proceedings are discontinued.

285 Subsection 84B establishes the disciplinary sanctions which are not set out within the IAA 1999 that may affect a person's ability to act under supervision. Such sanctions will be specified by the Secretary of State in regulations and will include those established under the regulatory frameworks of "designated professional bodies", and/or "designated qualified regulators".

286 Subsection 84B(1) grants the Secretary of State the power to specify, in regulations, the professional sanctions which will prevent someone from acting under supervision under

section 84(2)(e) IAA 1999. Such sanctions include, but are not limited to, those with the effect of disqualifying or suspending a person from practising as a member of a ‘relevant profession’. The power for the Secretary of State to specify these sanctions in regulations will ensure that the list of applicable sanctions is kept up to date in line with any future changes to the regulatory arrangements of “designated professional bodies”, or “designated qualified regulators”.

287 Subsection 84B(2) provides that the Secretary of State may specify, by regulations, the sanctions established under the regulatory frameworks of “designated professional bodies”, or “designated qualified regulators” which will prevent a person from acting under supervision, unless they disclose such sanctions to their supervisor prior to entering into a supervision arrangement. If a person continues to act under supervision and does not disclose those sanctions prior to entering into a supervision arrangement, they will have committed an offence under s.91(1) IAA 1999.

288 Subsection 84B(3) sets out the definition of “professional sanction”, “relevant disciplinary body” or “relevant profession”.

289 Sections 9, 10 and 11 confer powers on the Immigration Services Commissioner (ISC) to impose monetary penalties on persons providing immigration advice or immigration services.

290 Schedule 1, Section 9 inserts six new sections after section 92B of Part V of the Immigration and Asylum Act 1999 to allow the Immigration Services Commissioner (ISC) to impose monetary penalties on people providing immigration advice or immigration services.

291 Subsection 92C provides the Commissioner with the power to issue a penalty notice on the balance of probabilities that a person:

- registered at the time it happened, has failed to comply with the Code of Standards, their duty to assist with the investigation of a complaint, any other requirement under Part V or obstructing the Commissioner without reasonable excuse;
- who is not registered has failed to comply with the duty imposed on them by paragraph 6(2) of Schedule 5 (a duty to assist with the investigation of a complaint); or
- who was unqualified to do so has provided or advertised immigration advice or services (offences under sections 91 and 92B).

292 Subsection 92C further provides that the penalty may be either fixed or variable, limited to stated amounts, and amended by regulations.

293 Subsection 92D provides the procedure for imposing penalties. This includes notifying the person of an intention to issue them with a penalty notice, what the notification must state and what the penalty notice must state (the deadlines are, by default, in calendar days). The Commissioner must have regard to any representations about the proposal to impose a penalty notice. The amount payable may be reduced in the event of early payment or increased if the deadline is missed.

294 Subsection 92E sets out the appeals process against a penalty notice and provides that the requirement to pay is suspended during an appeal.

295 Subsection 92F sets out the enforcement of penalty notices in the different devolved administrations.

296 Subsection 92G states that the Commissioner must prepare and publish guidance about penalties, consulting as appropriate.

297 Subsection 92H provides that a person may not be convicted of the offence for which they have been issued a penalty notice.

298 Schedule 1, Clause 10 provides that the regulations amending the amount of a fixed penalty notice and the maximum amount specified in a variable penalty notice are subject to the affirmative procedure.

299 Schedule 1, Clause 11 amends Schedule 5 to add reference to the new power in 92C to impose monetary penalties for breaching the duty imposed by paragraph 6(2) underneath paragraph 6(3). It also adds reference to the new power in 92C to impose monetary penalties for breaching the Code or otherwise failing to comply with requirements imposed by or under the determination of complaints underneath paragraph 9(1).

300 Schedule 1, Clause 12 introduces new subsection 93A of Part V of the Immigration and Asylum Act 1999. It grants a power for the Secretary of State to specify, by order, the fees chargeable by the Commissioner to their registered organisations for exercise of various regulatory functions.

301 Subsection 93A (1) sets out that the Secretary of State may by order provide for fees to be charged in respect of the Commissioner's functions.

302 Subsection 93A (2) sets out that the order may make provision for the charging of certain activities, which include, but are not limited to:

- the taking of examinations
- assessment of competence
- changes to a person's registration
- training provided by the Commissioner to those providing or seeking to provide training
- provision of access to training or materials by the Commissioner
- provision of events by the Commissioner
- accreditation of training or events
- provision of advice by the Commissioner

303 The ISC will retain the authority to waive all or part of the specified fee in particular cases.

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- 304 Subsection 93A (3) sets out that the order may result in fees being charged in respect of a function which exceed the costs of exercising that function.
- 305 Subsection 93A (4) establishes that the Secretary of State, in specifying the amount of fees (noting that the fees charged may exceed the costs of exercising the function), may have regard to either (1) the costs of exercising the function, or (2) the costs of exercising any other function of the Commissioner.
- 306 Subsection 93A (6) confirms that “Registration” within this section means registration with the Commissioner under section 85 (IAA 1999).
- 307 Schedule 1, Clause 13 amends Schedule 6 paragraph 5 of the 1999 Act by replacing it with new paragraph 5 which states that no application made under section 93A will be entertained unless it is accompanied by the appropriate fee or covered by the applicable fee waiver.
- 308 Section 14 amends Part I of Schedule 5 to the Immigration and Asylum Act 1999 to add paragraph 5(3)(ba), the provision of immigration advice or immigration services by a person not regulated by the Commissioner, to the list of complaints in paragraph 5(3) that can be investigated.
- 309 It also amends paragraph 6(2) and adds new sub-paragraph 6(2A) to provide that the subject (whether an individual or body) of an investigation must assist the Commissioner and comply with any reasonable requirement, even if the individual has left since the immigration advice or services to which the complaint relates were provided and is no longer regulated by the Commissioner.
- 310 It further inserts (1)(f) into paragraph 9 to allow the Commissioner to order unregulated persons to refund all or part of the fees they charged for the immigration advice or immigration services to which the complaint relates and/or to pay an amount specified by order as compensation in respect of any loss, inconvenience or distress suffered as a result of the provision of the advice or services.
- 311 Subsection 9(1C) allows the Commissioner to order a body which was regulated at the time to which the complaint relates, and is no longer regulated, to do the same. It clarifies that a body is relevant if the adviser was acting as the employee, officer, member or partner of the body when providing the immigration advice or immigration services to which the complaint relates, and that “officer” means a director, manager, secretary or other similar officer of the body.
- 312 Subsections 9(1D), 9(1E) and 9(1F) specify that the amount that may be ordered to be refunded or paid in respect of a complaint must not exceed £250,000, that this amount may be amended by the Secretary of State by regulations and that the Commissioner can specify a deadline for the refund or payment to be made.
- 313 Subsection 9A provides that the Commissioner must notify the person of an intention to order them to refund fees or pay compensation and consider any representations and objections before any order is made.

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314 Subsection 9B provides for a person to make an appeal to the First-tier Tribunal against the Commissioner making an order.

315 Subsection 9C provides for the Commissioner to make an order for a person to refund fees or pay compensation, explains when the appeal rights have been exhausted and that the Commissioner may recover the amount due on behalf of the payee but only on application to the court, under the circumstances specified in the complaints scheme and with the payee's consent.

316 Section 15 adds the provision in 9(1E) for the Secretary of State to change the amount that may be ordered to be refunded or paid in respect of a complaint by regulations, to regulations that are subject to the affirmative procedure.

317 The above provisions combine to create a civil recovery mechanism for fee refunds and compensation to be given to people provided advice by those not permitted to do so, as well as to victims of poor practice from both regulated and unregulated advisers.

## Deportation etc

### Clause 41: Detention and exercise of functions pending deportation

318 This clause amends sub-paragraph 2 of paragraph 2 of Schedule 3 to the Immigration Act 1971 which provides the power to detain someone who is subject to deportation action on the grounds their presence in the UK is not considered conducive to the public good. It confirms that the Home Office may detain someone subject to conducive deportation from the point at which the Home Office serves notification that deportation is being considered.

319 Subsection (2)(a) provides that detention under sub-paragraph 2 of paragraph 2 of Schedule 3 to the 1971 Act only applies where the person has been notified in writing that the Secretary of State is considering whether to make a deportation order against them, or that the Secretary of State has decided to make a deportation order against them.

320 The clause also amends section 141(7)(c)(ii) and Regulation 2 of the Immigration (Collection, Use and Retention of Biometric Information and Related Amendments) Regulations 2021. This aligns the power to capture facial images and fingerprints with the power to detain people who are subject to clause 42. This means the Home Office will be able to capture their biometrics at the time they are detained.

321 The clause amends section 51 of the Immigration Act 2016 (search for nationality documents by detainee custody officers etc) so that the reference to the written notice which triggers a search, where the Secretary of State is considering deportation action, is aligned to the one used in the power to detain.

## EU Settlement Scheme

### Clause 42: EU Settlement Scheme: rights of entry and residence etc.

322 This clause means that all European Union (EU), other European Economic Area (EEA) and Swiss nationals, and their family members, with leave to enter or remain in the UK granted under the EU Settlement Scheme (EUSS) – which enables them to continue living in the UK now that the UK has left the EU – will be treated as being a beneficiary of the relevant Citizens' Rights Agreement.

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323 This will be so even where they are not within the personal scope of that Agreement because they (or their EU, other EEA or Swiss national family member) were not residing in the UK in accordance with EU law (or, in the case of other EEA and Swiss nationals, the relevant equivalent) immediately before the end of the post-EU exit implementation period at 11pm on 31 December 2020. Such a person will have directly enforceable rights in the UK under that Agreement, for as long as they hold leave to enter or remain under the EUSS. That is already the position, under section 7A or 7B of the European Union (Withdrawal) Act 2018, where they are within the personal scope of the relevant Citizens' Rights Agreement. The clause provides for it to be so where they are not.

324 Subsection (1) defines the residency and other rights, on which a person to whom the clause applies can rely directly under UK law, by reference to relevant provisions of Part 2 (citizens' rights) of the Withdrawal Agreement with the EU and the equivalent provisions of the Citizens' Rights Agreements with the other EEA states (Norway, Iceland and Liechtenstein) and Switzerland.

325 Subsection (2) defines who the clause applies to. It applies only where: (i) a person has leave to enter or remain under residence scheme immigration rules (i.e. the EUSS) granted to them as an EU, other EEA or Swiss national resident in the UK immediately before the end of the implementation period (or within a temporary absence from the UK permitted by those rules), or as their family member; and (ii) the EU, other EEA or Swiss national's continuous residence in the UK immediately before the end of the transition period was not in accordance with EU law (or, in the case of other EEA and Swiss nationals, the relevant equivalent). In all cases, the Home Office will have decided that the person meets the requirements of the EUSS and other public authorities will be expected to rely on that decision for as long as the person holds EUSS leave.

326 Subsections (3) and (4) explain some of the terms used in subsection (2), in particular by reference to residence scheme immigration rules (i.e. for the EUSS), contained in Appendix EU to the immigration rules.

327 Subsections (5) and (6) provide that a person to whom the clause applies can rely directly under UK law on the rights defined in subsection (1) as though they were in scope of the relevant Citizens' Rights Agreement. They can rely on those provisions in the same way that a person within the personal scope of the relevant Agreement can, further to section 7A or 7B of the European Union (Withdrawal) Act 2018.

328 Subsection (7) explains some legal terms used in the clause.

## Conditions on leave and bail

### Clause 43: Conditions on limited leave to enter or remain and immigration bail

329 This clause amends the Immigration Act 1971 to add electronic monitoring, curfews, inclusion zones, exclusion zones and any condition the Secretary of State thinks fit to the list of conditions that can be attached to a grant of limited leave to enter or remain (subsection (1) and (2)).

330 Subsection (3) inserts Schedule 1A to the Immigration Act 1971 to set out what is meant by an electronic monitoring condition and makes provision that an electronic monitoring condition cannot be imposed on a person under 18 years old.

331 Subsection (4) amends Schedule 10 to the Immigration Act 2016 to clarify that curfews, inclusion zones and exclusion zones can be imposed as conditions of immigration bail.

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## Powers to take biometric information

### Clause 44: Powers to take biometric information

332 This clause amends section 141 of the Immigration and Asylum Act 1999. It allows a person who is employed by a contractor in connection with the discharge of the contractor's duties under a short-term holding facility contract to be an authorised person to take fingerprints under the section.

333 In addition, subsection (5)(g) creates a power for the Secretary of State to make regulations to enable other types of people to be authorised for the taking of biometric information.

## Employment

### Clause 45: Extension of prohibition on employment to other working arrangements

334 Subsections (1) and (2) state that this clause amends section 15 of the Immigration, Asylum and Nationality Act 2006 by inserting other working arrangements.

335 Subsection (3) inserts Section 14A and provides that reference to a person employing another person in sections 15 to 24 of the Immigration, Asylum and Nationality Act 2006 now includes a person engaging an individual under a worker's contract, a person engaging an individual sub-contractor and an online matching service providing details of an individual who is a service provider to potential clients or customers. References to an individual includes individuals only and references to a person includes both an individual and a body such as a company.

336 14(A)(2) provides that reference to employment in sections 15 to 24 of the Immigration, Asylum and Nationality Act 2006 includes the engagement mentioned at paragraphs (a) or (b) of subsection (1).

337 14(A)(3) defines "worker's contract" to include a contract under which an individual undertakes to perform work for person A or another person regardless of whether the other person is identified in the contract and where Person A is not a client or customer of any business or professional undertaking of individual A. It also defines an "individual sub-contractor" to include an individual who has entered into a contract with a person B to provide work or services and where person B has entered into a contract with a third party to provide for or arrange the work or services, but the individual has not.

338 The subsection defines an "online matching service" to include a person who keeps a register of service providers to match them with potential clients, provides an online service where potential clients can submit enquiries in order to be matched with suitable service providers and where the "online matching service" charges a fee or a commission in return. It also defines "service provider" to include a person providing or seeking to provide work or services in exchange for remuneration.

339 14(A)(4) provides that subsection (1)(a) and (2) does not apply where individual A undertakes to perform work or services for a person other than person A, under a worker's contract, and the person for whom individual A performs work or services is a client of a profession or business undertaking of individual A.

340 14A(5) defines a contract to include a contract that is express (oral or in writing) or implied.

341 14A(6) provides that section 14A(a)(c) does not apply in relation to section 15A(1)(a), instead section 15A(3) and (4) address the application of that section to online matching services.

- 342 Subsection (4) inserts Section 15A to the Act. 15A(1) provides that section 15A(4) applies where a person (A) employs an individual to provide work or services or is contracted to provide or arrange work or services and enters into contract under which another person provides or arranges the work or services or part of it.
- 343 15A(2) provides that section 14A(1)(c) (online matching services) does not apply in relation to section 15A(1) and instead section 15A (3) and (4) applies in relation to online matching services.
- 344 15A(3) provides that section 15A(4) applies where a person A is an online matching service who provides details of another person who is a service provider to potential clients and as a result of being matched by person A, the service provider enters into a contract with a client to provide work or services.
- 345 15A(4) has the effect that for the purposes of section 15, a person (A) will be treated as employing any individual (B) who personally provides the work or services including in circumstances where A is not in a contractual relationship with B or A does not know that B is providing the work or services.
- 346 15A(5) provides that section 15A(4) applies in circumstances where A is contracted to provide or arrange for the provision of work or services, regardless of whether the contract for the provision of work or services is the first contract or whether there is any other contract in a chain of contracts.
- 347 15 A(6) provides that section 15A does not affect the liability of any other employer under section 15.
- 348 15A(7) provides that where there is reference to a person employing another person in section 15, 16, 17, 23 and 24 this will now include a reference to a person who is treated as such by virtue of section 15(A)(4).
- 349 15A(8) confirms that “online matching services” and “service provider” have the same meaning as that defined in section 14A.
- 350 Subsection (5) amends Section 25 of the Act by inserting the words “subject to section 14A and 15A and delete “whether” to the end of the paragraph and inserts paragraph (ba) which provides that reference to a contract includes a contract that is express (oral or in writing) or implied.

## Appeals

### Clause 46: Timeframe for determination of appeal brought by appellant receiving accommodation support

- 351 This clause will introduce a statutory timeframe for the determination of supported asylum appeals in the Tribunal, where that support is being provided in the form of temporary asylum accommodation.
- 352 This clause will insert section 86A ‘Timeframe for determination of appeal under section 82(1)(a) where appellant is receiving accommodation support’ after section 86 of the Nationality, Immigration and Asylum Act 2002.
- 353 Section 86A(1) specifies that the statutory timeframe applies to appeals against asylum and humanitarian protection refusal decisions brought by a person to whom, at the time the

appeal is instituted, accommodation is being provided by the Home Office under section 95 or 98 of the Immigration and Asylum Act 1999.

354 Section 86A(2) sets out that the Tribunal must, except where the Tribunal considers that it is not reasonably practicable to do so, determine the appeal and give notice of its determination to the parties before the end of the period of 24 weeks beginning with the day after that on which the appeal is instituted.

355 Section 86A(3) stipulates that the statutory timeframe does not apply or, as the case may be, ceases to apply, if the appeal must be brought, or must be continued, from outside the United Kingdom.

## Clause 47: Timeframe for determination of certain appeals brought by non-detained appellants liable to deportation

356 This clause will introduce a targeted statutory timeframe for the determination of appeals in the Tribunal from non-detained persons who have been convicted of an offence and who are subject to a deportation decision.

357 This clause will insert section 86B 'Timeframe for determination of appeal brought by certain non-detained appellants liable to deportation' after section 86A of the Nationality, Immigration and Asylum Act 2002.

358 Section 86B(1)(1) specifies that the statutory timeframe applies to appeals against a refusal of a protection claim or a human rights claim or a decision to revoke a person's protection status, as specified by section 82(1) and 82(2) of the Nationality, Immigration and Asylum Act 2002.

359 Section 86B(1)(2) outlines that the statutory timeframe will apply if, at the time the appeal is instituted, the appellant is not detained, has been convicted of an offence (whether in or outside the United Kingdom) and is liable to deportation under section 3(5)(a) of the Immigration Act 1971.

360 Section 86B(1)(3) sets out that the Tribunal must, except where the Tribunal considers that it is not reasonably practicable to do so, determine the appeal and give notice of its determination to the parties before the end of the period of 24 weeks beginning with the day after that on which the appeal is instituted.

361 Section 86B(1)(4) stipulates that the statutory timeframe does not apply or, as the case may be, ceases to apply, if the appeal must be brought, or must be continued, from outside the United Kingdom.

362 Sections 86B(2) & (3) apply the new section 86B to appeals under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 (S.I. 2020/61) and the Immigration (European Economic Area) Regulations 2016 (S.I. 2016/1052) in circumstances where an appeal is brought under those Regulations by a non-detained person who has been convicted of an offence and who is liable to deportation.

## Refugee Convention

### Clause 48: Refugee Convention: particularly serious crime

363 This clause defines a sexual offence under Schedule 3 Sexual Offences Act (SOA) 2003 as a 'particularly serious crime' for the purposes of excluding refugees from the protection from refoulement, in line with Article 33(2) of the Refugee Convention.

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- 364 Subsection 2 inserts new section 5ZA into section 72 of the Nationality, Immigration and Asylum Act 2002. Subsection 5ZA presumes that an individual who receives a conviction for an offence listed in Schedule 3 of the Sexual Offences Act 2003, has received a conviction for a particularly serious crime for the purposes of Article 33(2) of the Refugee Convention. The new subsection 5ZA(b) means that if an individual is convicted by a final judgment of a Schedule 3 offence but the offence already meets the provision set out in subsection 2 of section 72 of the Nationality, Immigration and Asylum Act 2002, then subsection 5ZA(a) will not apply.
- 365 Subsection 2 also inserts a new section 5ZB into section 72 of the Nationality, Immigration and Asylum Act 2002. Subsection 5ZB presumes that an individual who receives a conviction outside of the UK for an offence that would have constituted a Schedule 3 offence, had it been committed in the UK, is convicted of a particularly serious crime for the purposes of Article 33(2) of the Refugee Convention. The new subsection 5ZB(c) means that if an individual is convicted by a final judgment of an equivalent of a Schedule 3 offence outside of the UK, but the offence already meets the provision set out in subsection 3 of section 72 of the Nationality, Immigration and Asylum Act 2002, then subsection 5ZB(a) and (b) will not apply.
- 366 Subsection 3 inserts a new section 5B into section 72 of the Nationality, Immigration and Asylum Act 2002. This creates a presumption that any individual who has been convicted of a particularly serious crime under 5ZA or 5ZB constitutes a danger to the community of the UK.
- 367 Subsections 4, 5, 6, 7 and 8 make consequential changes to section 72 of the Nationality, Immigration and Asylum Act 2002, to reflect the new provisions inserted by new subsections 5ZA and 5ZB.

## Part 3: Prevention of Serious Crime

### Offences relating to things for use in serious crime

#### Clause 49: Articles for use in serious crime

- 368 This clause creates two new criminal offences of possessing any specified article where a person intends, or has reasonable grounds to suspect, that it will be used in connection with any serious offence; and of importation, manufacture, adaptation, supply or, offering to supply a specified article where there are reasonable grounds to suspect that the article will be used in any serious offence. For the purposes of these criminal offences, “serious offence” means the serious offences specified in Schedule 1 to the Serious Crime Act 2007. These include offences such as fraud, money laundering, terrorism, and drug and people trafficking.
- 369 Subsections (1) and (2) create the offences of possession and importation, manufacture, adaptation, supply or offering to supply an item (listed in Clause 50 (1)), referred to as a ‘relevant article’, in circumstances which give rise to a reasonable suspicion that the article will be used in connection with any serious offence.
- 370 Subsection (3) provides a defence for a person charged with one of the above offences if they can prove that they did not intend or suspect that the article would be used in connection with a serious offence.
- 371 Subsection (4) explains that a court can assume a person possessed the relevant article if there is proof that (a) the accused was in the same location as the relevant article, or (b) the relevant article was present in the location where the accused resided, or a location that the accused used habitually other than as a member of the public. The court cannot assume possession in



this way where the accused shows they did not know of the article's presence on the premises or that they had no control over it.

372 Subsection (5) and (6) explains that a person can be considered to have successfully proven their defence if they meet two key conditions: a) the defendant provides enough evidence to raise a question about the issue in court and b) the prosecution cannot prove the opposite beyond a reasonable doubt. Therefore, the defendant does not have to prove their case with absolute certainty; they just need to raise enough doubt, and if the prosecution cannot disprove this doubt, the defence succeeds.

373 This is a reverse evidential burden of proof. This differs from a reverse legal burden of proof, which would require the defence to prove evidence to the civil standard, which is the balance of probabilities.

374 Subsection (7) defines 'relevant article' as that set out in Clause 50 (see below) and 'serious offence' as those offences specified in Part 1 of Schedule 1 to the Serious Crime Act 2007 for England and Wales, Part 1A of Schedule 1 to the Serious Crime Act 2007 for Scotland and Part 2 of Schedule 1 to the Serious Crime Act 2007 for Northern Ireland. These offences include offences such as people trafficking, drug trafficking, bribery, and armed robbery.

375 Subsection (8) sets out the maximum penalties in relation to these offences in England and Wales, Scotland, and Northern Ireland, respectively. The maximum penalty on summary conviction in England and Wales is imprisonment for the general limit in a magistrates' court (currently six months) or a fine, or both. The maximum penalty on summary conviction in Scotland is 12 months' imprisonment, a fine not exceeding the statutory maximum or both. The maximum penalty on summary conviction in Northern Ireland is imprisonment for a term not exceeding 6 months or a fine limited to level 5 on the standard scale (£5,000) or both. In England and Wales, Scotland, and Northern Ireland the maximum penalty for conviction on indictment is five years' imprisonment, or a fine, or both.

#### Clause 50: Section 49: meaning of "relevant article"

376 This clause defines the article ("relevant article") for the purposes of the offence in Clause 49. Those articles are: a template to make 3D printed firearm components; an encapsulator; a tablet press; and a vehicle concealment.

377 Subsection (2) sets out the definition of: a "3D printer firearm template" to be any document (any form of information) that may be used in conjunction with a 3D printer to produce any part of a firearm (as defined by section 57 of the Firearms Act 1968); an "encapsulator" to mean any device which may be used to produce capsules; a "tablet press" to include any device which may be used to produce tablets; "vehicle" (as defined in section 1(1) of the Customs and Excise Management Act 1979); and "vehicle concealment", meaning a compartment which forms or is intended to form part of (or be attached to) a vehicle and which conceals or facilitates the concealment of things or people or is intended to facilitate their concealment.

378 Subsection (3) provides the Secretary of State the power to amend the list of articles by regulation subject to the affirmative procedure. Before exercising this power and making regulations under this clause, the Secretary of State must consult Ministers in the Scottish Government and the Department of Justice in Northern Ireland (subsection (4)).

#### Clause 51: Confiscation of assets

379 This clause amends the Proceeds of Crime Act (POCA) 2002, which adds 'offences relating to things for use in serious crime' into the relevant territorial schedules, as set out in subsection

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(2) (3) and (4). This means the ‘relevant articles’ listed in Clause 50 may be confiscated under POCA.

## Serious crime prevention orders

380 Serious Crime Prevention Orders (“SCPOs”) were introduced by Part 1 of the Serious Crime Act 2007 (“SCA 2007”). SCPOs are civil preventative orders which can impose tailored prohibitions, restrictions, and requirements on a person for a period of up to five years to prevent, restrict or disrupt their involvement in serious crime. The terms of an SCPO might relate to, for example: business and financial dealings, use of premises or items, provision of goods or services, employment of staff, association with individuals, means of communication or restrictions on travel.

381 There is a list of ‘serious offences’ in Schedule 1 to the SCA 2007 for which an SCPO can be applied, including offences such as fraud, money laundering, terrorism, drug trafficking and people smuggling. A “person” includes both individuals and bodies corporate, such as limited liability companies, partnerships, and unincorporated associations (associations which carry out a common enterprise such as a trade union).

382 Clauses 52 to 56 make a number of amendments to the SCA 2007 in relation to SCPOs and will apply to England and Wales with the exception of clause 53, interim SCPOs, which extends UK wide in terrorism related cases.

### Clause 52: Electronic monitoring requirements

383 This clause inserts new sections 5B, 5C and 5D into the SCA 2007 to provide the courts with the express legislative power to impose an electronic monitoring requirement as a part of an SCPO.

384 New section 5B (1) sets out that SCPOs can include the requirement for persons subject to an SCPO in England and Wales to submit to electronic monitoring, solely in order to monitor their compliance with other terms and restrictions of the order (for instance where curfews or restrictions on movement are part of the terms of an individual’s SCPO). Such a requirement is referred to in new section 5B as an “electronic monitoring requirement”.

385 New section 5B (3) and (4) stipulates the requirement for a person to be specified who will be responsible for the monitoring (“the responsible person”) and that it will be set out in regulations made by the Secretary of State. In practice, this will specify the service provider or providers who are contracted to provide electronic monitoring services for the purposes of the SCPO regime.

386 New section 5B(5)(a) to (c) outlines the obligations on the person subject to an electronic monitoring requirement as part of an SCPO regarding the fitting, installation, inspection, or repair of the device. Someone who is subject to this requirement must: allow any necessary device to be fitted to them or installed; allow the device to be inspected; not interfere with the working of any device necessary for the electronic monitoring (such as tampering or intentionally damaging the device); and take any steps required by the ‘responsible person’ (the service provider) to keep the device in working order.

387 New section 5B (6) provides that an electronic monitoring requirement cannot be imposed for more than 12 months at a time. This provision is subject to sections 17, 20, 21 and 22E of the SCA 2007, as amended by subsections (3) to (5) of new section 5D, which allow for the

extension of the electronic monitoring requirement beyond 12 months upon application. The electronic monitoring requirement can only be extended up to 12 months at a time thereafter.

388 New section 5C (1) to (3) sets out the statutory safeguards and provisions which courts must consider before imposing electronic monitoring as a condition of an SCPO. These include that the electronic monitoring requirement cannot be imposed in the absence of the person subject to the SCPO and that the consent of any additional persons must be gained if the electronic monitoring of an individual would be impractical to impose without their cooperation.

389 New section 5C (4) sets out that the court may only impose an electronic monitoring requirement in England and Wales if it has been notified by the Secretary of State that electronic monitoring arrangements are available in the relevant police area (for example, the “relevant police area” has the available technology), and that the court is satisfied that the necessary provision can be made under the available arrangements to support the electronic monitoring requirement.

390 New section 5C (5) defines the “relevant police area” within England and Wales as the police area where the person resides or will reside. The relevant police area can also be the specified area where the person must remain or is prohibited from entering as part of the specific conditions set out in the SCPO.

391 A code of practice will outline the expectations, safeguards, and broad responsibilities for the collection of data gathered, retention and sharing of information on these orders. New section 5D (1) sets out the statutory requirement for the Secretary of State to issue a code of practice relating to the processing of data gathered during electronic monitoring as a condition for an SCPO.

392 New section 5D (2) stipulates that failing to act in accordance with the code of practice does not of itself make a person liable to criminal or civil proceedings.

393 New section 5D (3) to (5) introduces restrictions on the extension of electronic monitoring requirements. Specifically, courts in England and Wales are prohibited from extending such requirements by more than 12 months at a time.

394 Subsection (6) makes consequential amendments to section 89 of the SCA 2007 to apply the general provisions there in respect of the order-making powers in that Act to the new regulation-making power provided for in new section 5B.

### Clause 53: Interim serious crime prevention orders

395 This clause introduces a new provision under the SCA 2007 for Interim Serious Crime Prevention Orders (ISCPOs). These interim orders provide the High Court with a power to impose immediate restrictions or requirements to protect the public by preventing, restricting or disrupting the person’s involvement in serious crime, pending the determination of a full SCPO application. Clause 53 inserts new section 5E, “interim serious crime prevention orders” (ISCPO) into the SCA 2007.

396 New section 5E (1) (a) grants the High Court in England and Wales the authority to issue an ISCPO if (a) the application for an SCPO in relation to the individual has been made but not yet been determined.

397 New section 5E (1) (b) extends the power to issue ISCPOs to the appropriate court in Scotland and the High Court in Northern Ireland, specifically in cases that are terrorism-related (as defined in Section 8A of the SCA 2007).

- 398 New section 5E (2) stipulates that the court may exercise this power if the court considers it just to do so. It is a matter for the court to determine whether it is just to make an interim order. For example, the court may make an interim order in a case where it is satisfied that this is necessary for the purpose of protecting the public from immediate harm pending the determination of the application for the full SCPO.
- 399 New section 5E (3) allows the court to impose prohibitions, restrictions or requirements deemed appropriate by the court to protect the public by preventing, restricting or disrupting involvement by the person subject to an ISCPO in serious crime. This is the same as for a full SCPO.
- 400 New section 5E (4) incorporates sections 5 to 5D of the SCA 2007 – the express power to impose electronic monitoring - in relation to ISCPOs.
- 401 New section 5E (5) stipulates that an ISCPO may only be made if the application for the interim order is made at the same time as or after the main application for a full SCPO.
- 402 New section 5E (6) and (7) defines the terms ISCPO, main application and the person who is the subject of an ISCPO.
- 403 New section 5F (1) permits applications for ISCPOs or their variation to be made without notice (ex parte) to the subject if notice would likely to prejudice the intended outcome of the order.
- 404 New section 5F (2) requires the courts to provide the subject of an ‘ex parte’ order an opportunity to make representations about the order as soon as reasonably practicable and at a hearing with notice of the hearing provided to the subject of the order in accordance with court rules.
- 405 New section 5F (3) prohibits the dismissal of an application to vary or discharge an ex parte ISCPO unless the person who makes the application has had a chance to make representations at a hearing of which notice has been given to the person in accordance with rules of court.
- 406 New section 8AA restricts applications for ISCPOs to the relevant application authority as defined in section 10(4) of the SCA 2007, in connection with the main application for an SCPO. Therefore, only the relevant applicant authorities can make interim SCPO applications, and they must be linked to an ongoing full SCPO case. This safeguard ensures that ISCPOs are not made in isolation but as part of the full SCPO application process.
- 407 New section 10A (1) specifies that the subject of an ISCPO is bound by the order (or its variation) if the subject is present or represented at the court at the time the order is made or a notice setting out the terms of the ISCPO is served on the subject (in relation to an order made without notice) as soon as reasonably practicable.
- 408 New section 10A (2) and (3) requires that delivery of the notice of the ISCPO must be in person unless the court permits alternative methods and served no later than 7 days after the order was made. Law enforcement agencies may enter any premises (if necessary by force) where there are reasonable grounds to believe that the person is present, so as to search for the person and serve the order.
- 409 New section 10A (4) stipulates that any method that the court allows can be used if personal service has not been possible.

410 New section 10A (5) amends section 16 of the SCA 2007 to specify that an ISPCO must have an end date which is either the date specified in the order or, if earlier, the determination of the main SCPO application.

411 New section 10A (6) amends section 25(1) of the SCA 2007 to align ISPCOs with main application SCPOs that the person commits an offence if they fail to comply with an order without reasonable excuse.

#### Clause 54: Applicants for making of orders and interim orders.

412 This clause replaces section 8 of the SCA 2007 (which provides a list of applicants who can apply for an SCPO and ISPCO) to extend the list of parties who may apply to the High Court in England and Wales for an interim or full SCPO.

413 Subsection (2) inserts new subsections (1) to (4) into section 8 of the SCA 2007. New section 8(1) provides the following additional applicants the power to apply directly to the High Court in England and Wales for an SCPO only if they have consulted the Director of Public Prosecutions:

- a. the Director General of the National Crime Agency;
- b. the Commissioners of His Majesty's Revenue and Customs;
- c. a chief officer of police;
- d. the Chief Constable of the British Transport Police; or
- e. the Chief Constable of the Ministry of Defence Police.

414 New section 8(2) and (3) maintains the current list of bodies that can apply for a SCPO to the relevant courts in Scotland and to the Crown Court in England and Wales.

415 New section 8(4) restates the current list of bodies that can apply for an SCPO to a court in Northern Ireland.

416 Subsection (3) amends section 10(4) of the SCA 2007, which provides the definition of “the relevant applicant authority”, to include any other person set out in section 8(1) who applied for an order.

417 Subsection (4) amends section 27 (power to wind up companies: England and Wales) of the SCA 2007 by substituting a new Section 1A to extend the power to those persons mentioned in section 8(1)(a)(iii) to (vii) to submit a petition to the court for the winding up of a body (company, partnership, or relevant body). A petition can only be submitted if the body has been convicted of an offence by failing to comply with an SCPO as set out in section 25 of the SCA 2007 and the applicant considers it would be in the public interest for the company to be wound up. For example, the Director General of the NCA could submit an application to the court to wind up a company if the Director General considered it to be in the public interest.

418 Subsection (5) amends Schedule 2 to the SCA 2007, which provides for the functions of the applicant authorities that can make applications for orders. The amendments confer the relevant functions on the Director General of the NCA, Commissioners of HMRC and the chief constables of BTP and MDP. These functions include applying for SCPOs, or the variation or discharge of an order; appearing on applications by others for the variation or discharge of an order; having the conduct of or appearing in any other proceedings about an SCPO; providing advice about any proceedings or possible proceedings in connection with an

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SCPO; or anything for the purposes of, or in connection with, these functions. Special provision has to be made because functions in relation to SCPOs fall outside the usual functions of the persons concerned.

419 New paragraphs 15BB and 15BD of Schedule 2 to the SCA 2007 enable the chief constables of BTP and MDP to delegate the exercise of the specified functions to an officer of at least the rank of superintendent.

## Clause 55: Notification requirements

420 This clause amends the SCA 2007 to provide that all SCPOs made in England and Wales automatically impose a prescribed set of notification requirements. When someone is subject to notification requirements, they must provide the police or applicant authorities with certain information, such as their home address or email address. This information allows the police and other authorities to monitor an offender and to manage any ongoing risk that they pose.

421 Under sections 1, 5 and 19 of the SCA 2007, SCPOs can include any requirements which the court considers appropriate for the purpose of protecting the public by preventing, restricting, or disrupting involvement by the person concerned in serious crime. Clause 55 standardises the information received and recorded by law enforcement agencies in relation to those subject to an SCPO – both individual persons and bodies corporate. This will provide continuity in the management of persons subject to an SCPO, particularly as they move between different geographical areas, or between different stages of the criminal justice system, such as between custody and being on licence in the community.

422 Subsection (2) inserts new section 15A into the SCA 2007.

423 New section 15A sets out the requirement that each SCPO must specify an authority to whom notifications under new Schedule 1A of the SCA 2007 are given. The authorities to which notifications can be given in England and Wales are those detailed in section 8(1)(a) of the SCA 2007 (as amended by Clause 54 of the Bill).

424 Subsection (3) inserts new Schedule 1A into Schedule 1 of the SCA 2007.

425 Paragraph 1 (1) to (4) of new Schedule 1A relate to bodies corporate as opposed to individuals.

426 Paragraph 1(1) sets out the requirement for a body corporate that is subject to an SCPO to identify a person responsible for communicating with the specified authority on behalf of the body, and to notify the specified authority of this person's identity within three days of the SCPO coming into force. The individual appointed must be a person who has provided their continued consent to act on behalf of the relevant body and must not themselves be subject to an SCPO.

427 Paragraph 1 (3) and (4) requires the relevant body to notify the specified authority of the name of a replacement individual who is authorised to communicate with the specified authority on behalf of the body if the named person changes.

428 Paragraph 2 (1) to (6) of new Schedule 1A relates to individuals as opposed to bodies corporate.

429 Paragraph 2 (1) and (2) details the notification requirements for individuals (including a partner in a partnership) subject to an SCPO. The person subject to the SCPO must provide the notifiable information to the specified authority within three days of the day on which the order comes into force. Paragraph 2 (2) sets out the requirement for persons who are subject to an SCPO, to notify the specified authority of any change in the notifiable information set out in paragraph 2 (5) within the period of three days, beginning with the day that change occurs.

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430 Paragraph 2 (3) provides for notification requirements where more than one SCPO is in force at the same time. This sub-paragraph sets out an exception whereby if a person is subject to an SCPO with notification requirements, and a second SCPO comes into force which would require the same notifications to be given to the same specified authority, the person does not need to provide the notified information twice. A person will therefore not be subject to multiple notification requirements to the same specified authority at the same time. Sub-paragraph (4) sets out that if an SCPO ceases to be in force, but another SCPO remains in force, the notification requirements of the second SCPO will apply.

431 Paragraph 2 (5) details the notifiable information, which includes the person's name (including aliases) and address; the person's telephone numbers and e-mail addresses; usernames the person uses to access social media, or that identify the person on social media; names used to access online video games with messaging functionality, or that identify the person on these games; identifying information of relevant motor vehicles; specified financial information; specified information about identification documents; and the name and address of the person's employers. Sub-paragraph (5)(j) allows for the Secretary of State to add prescribed notification requirements via regulations. Sub-paragraph (6) defines the meaning of the various notification requirements under sub-paragraph (5)

432 A person will commit an offence if they do not provide the required notified information to the specified authority set out in the SCPO within the required timeframe without reasonable excuse, or knowingly providing false information. A person will also commit an offence by not updating the required notified information to the police within the required timeframe without reasonable excuse, or knowingly providing false information. The maximum penalty on summary conviction in England and Wales is imprisonment for the general limit in a magistrates' court (currently six months), an unlimited fine, or both. Paragraph (3) of new Schedule 1A creates these offences in England and Wales.

433 Subsection (4) amends section 10 of the SCA 2007, which sets out notice requirements in relation to orders, to specify that the requirements imposed on a person are to be treated as terms of the SCPO for the purposes of 10(1)(b) and sections 30(1), 31(4) and 32(3) of the SCA 2007. These subsections all pertain to the serving of a notice setting out terms of the order, and these amendments are to ensure the requirements in section 15 of the SCA 2007 are duly captured.

434 Subsections (5) and (6) make consequential amendments to the SCA 2007 to take account of new section 15A.

435 Subsection (7) makes a consequential amendment to section 89 of the SCA 2007, the effect of which is to provide that regulations made under the new provisions are subject to the draft affirmative procedure.

## Clause 56: Orders by Crown Court on acquittal or when allowing an appeal

436 This clause amends the SCA 2007 so as to extend to the Crown Court in England and Wales, the power to impose an SCPO on acquittal or when allowing an appeal.

437 Subsection (2) inserts new section 19A into the SCA 2007. New section 19A (1) sets out the circumstances in which the Crown Court may make an SCPO on acquittal or where the court allows a person's appeal against a conviction for an offence. This is when the court is a) satisfied that the person has been involved in serious crime whether in England and Wales or elsewhere and b) when the court has reasonable grounds to believe that an SCPO would protect the public by preventing, restricting, or disrupting involvement by the person in

serious crime in England and Wales. This is a two-limb test: both (a) and (b) must be satisfied for the court to impose an SCPO.

438 New section 19A (2) stipulates that the Crown Court cannot impose two concurrent SCPOs or ISCPOs on a person; the court must discharge the existing Crown Court order. This mirrors the existing provision for Crown Court SCPOs on conviction in the Serious Crime Act 2007.

439 New section 19A (3) sets out that an order may contain such prohibition, restrictions, requirements or any other such terms as the court considers appropriate to disrupt involvement in serious crime within England and Wales.

440 New Section 19A (4) sets out that the powers of the court in respect of an SCPO imposed under this section are subject to the safeguards set out in section 6 to 15 of the Serious Crime Act 2007.

441 Subsections (3) to (8) make consequential amendments to the SCA 2007 to reflect the new section 19A.

## **Schedule 2: Interim serious crime prevention orders: consequential amendments**

442 Schedule 2 outlines the consequential amendments in the SCA 2007 for ISCPOs.

443 Section 6 of the SCA 2007 states that an individual under the age of 18 may not be the subject of a serious crime prevention order. Schedule 2, 2, amends section 6 to extend this safeguard to ISCPOs.

444 Section 7 of the SCA 2007 establishes a limitation on who can be made subject to a SCPO. Schedule 2, 3, amends section 7 of the SCA 2007 to extend this safeguard to ISCPOs.

445 Schedule 2, 4, amends section 9 of the SCA 2007 to extend the following provision to ISCPOs. Section 9 of the SCA 2007 ensures that any person likely to be significantly adversely affected by the making, variation or discharge of a SCPO is given the opportunity to present their case (make representations) in court proceedings related to that SCPO.

446 Schedule 2, 5 – 9, amends section 11 – 15 of the SCA 2007 to extend safeguards to ISCPOs in Sections 11 to 15 of the SCA 2007. These impose key restrictions on what a SCPO can require from individuals, ensuring certain protections and safeguards.

447 Schedule 2, 10 -12, amends sections 16 – 18 of the SCA 2007 to extend these provisions to ISCPOs. Sections 16 to 18 of the SCA 2007 set rules for the duration, variation and discharge of SCPOs. An SCPO can last up to 5 years and may have different start and end times for its provisions (section 16). The Courts can vary an SCPO if doing so would be better protect the public. Variations of SCPOs require reasonable justification such as a change of circumstance (section 17). An SCPO can be discharged entirely, but this also requires justification and consideration of its impact on those affected (section 18).

448 Schedule 2, 13 – 14, amends sections 20 to 21 of the SCA 2007 to extend these powers to ISCPOs. Sections 20 to 21 of the SCA 2006 empower the Crown Court to make, vary or replace a SCPO upon conviction or sentencing to prevent future involvement in serious crime.

449 Schedule 2, 15 – 19, amends sections 22-22E of the SCA 2007 to extend these powers to ISCPOs. Section 22 of the SCA 2007 outlines the interactions allowed between different types of orders. For example: the fact that a serious crime prevention order has been made or varied by the High Court does not prevent it from being varied by the Crown Court in accordance with this Part.

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- 450 Schedule 2, 20-22, amends section 23 and 24A of the SCA 2007 to extend these powers to ISCPOs. Sections 23 and 24 of the SCA 2007 provide the right to appeal decisions relating to SCPOs made by the relevant Court.
- 451 Schedule 2, 23-25, amends section 27 to 28 of the SCA 2007 to extend these powers to ISCPOs. Sections 27 to 28 of the SCA 2007 provide the power to the applicant authority to petition for the winding up of companies, partnerships and bodies corporate, convicted of breaching an SCPO and provided it is in the public interest to do so.
- 452 Schedule 2, 26 – 28, amends section 30 to 32 of the SCA 2007 to extend these provisions to ISCPOs. Sections 30 to 32 set out how SCPOs apply to bodies corporate, partnerships, and unincorporated associations, ensuring that the orders remain in effect despite changes in the structure/personnel of these companies.
- 453 Schedule 2, 29, amends section 34 of the SCA 2007 to extend this provision to ISCPOs. Section 34 of the SCA 2007 limits the terms that can be included in a SCPO for service providers.
- 454 Schedule 2, 30 – 32, amends section 35 and 36A of the SCA 2007 to extend this to both SCPOs and ISCPOs. Sections 35 to 36 of the SCA 2007 establish that proceedings relating to SCPOs in both the High Court and Crown Court are civil proceedings and apply the civil standard of proof (balance of probabilities).
- 455 Schedule 2, 33, amends section 38 of the SCA 2007 to extend this to ISCPOs. Section 38 of the SCA 2007 states that if a person complies with the SCPO to provide information/documents, they do not breach any obligation of confidence.
- 456 Schedule 2, 34 – 36, amends section 39 to 41 of the SCA 2007 to extend this to ISCPOs. Sections 39 to 41 of the SCA 2007 address compliance with SCPOs, allowing law enforcement agencies to retain documents obtained under SCPOs for legal proceedings or enforcement purposes.
- 457 Schedule 2, 37 amends Section 43 adding ISCPO as a defined term.
- 458 Schedule 2, 38 creates further amendments to Schedule 2 extending SCPO functions of application authorities to ISCPOs.

## **Part 4: Miscellaneous and General**

### **Miscellaneous**

#### **Clause 57: Validation of fees charged in relation to qualifications**

- 459 This clause establishes retrospective power for the charging of fees for services related to the comparability, recognition and assessment of qualifications obtained outside and within the United Kingdom. It has been determined that these fees in whole or part require, or may require, a statutory basis. This statutory basis has not been in place for a part or the whole of the period of their being charged by several government departments, currently the Home Office and the Department for Education.
- 460 Establishing retrospective power for these fees to be charged removes the possibility of customers requesting refunds for fees paid for services, the benefits of which they have fairly received.
- 461 This clause establishes that fees meeting the conditions in subsections (2)-(4) are taken to have been lawfully charged. Under subsection (6) the fees may have been charged by the Secretary

of State or persons acting through arrangements with the Secretary of State, for example an external supplier under a contract.

## General

### Clause 58: Financial provisions

462 This clause sets out the financial provisions for the Bill.

### Clause 59: Consequential and minor provision

463 This clause sets out how the Secretary of State may make further provisions as a consequence of this Act, by regulation.

### Clause 60: Regulations

464 This clause sets out how the powers to make regulations conferred on the Secretary of State will be used in practice.

465 Subsection (1) sets out that consequential amendments can be made alongside regulations under any provision in this Bill.

466 Subsection (2) explains that any regulations made using powers granted to the Secretary of State by this Bill must be made by statutory instrument.

467 Subsection (3) sets out that sections 15(3), 33(8), 50(3) and 59(1) require a draft of the instrument to be laid before and approved by both Houses of Parliament before coming into force (the affirmative resolution procedure).

468 Subsection (4) sets out that any other section is subject to annulment in pursuance of a resolution of either House of Parliament (the negative resolution procedure).

469 Subsection (5) confirms that this clause does not apply to clause 58 (commencement).

470 Subsection (6) sets out the meaning of “primary legislation”.

### Clause 61: Extent

471 This clause sets out the extent of the provisions in this Bill.

472 Subsection (1) explains that the Bill extends to England and Wales, Scotland and Northern Ireland.

473 Subsection (2) provides that where this Bill amends or repeals other legislation, the changes will have the same extent as the legislation to which those changes are made.

474 Subsection (3) sets out the provisions which apply to the Channel Islands and the Isle of Man and British Overseas Territories.

475 Subsections (4), (5) and (6) outline where provisions can be extended to any of the Channel Islands or the Isle of Man.

### Clause 62: Commencement

476 This clause explains when the provisions of the Bill will come into force.

477 Subsections (1) and (2) provide that the Secretary of State may by regulations appoint the day or days on which the provisions in this Bill will come into force, with the exception of those provisions which will come into force either when this Bill becomes an Act of Parliament or two months after that date (see subsections (3) to (5)).

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478 Subsection (3) sets out which provisions of this Bill will come into force on the day this Bill becomes an Act of Parliament.

479 Subsection (4) sets out the provisions of this Bill which come into force two months after this Bill becomes an Act of Parliament.

480 Subsection (5) sets out that the Secretary of State may make transitional or saving provisions by regulations when this Bill comes into force as an Act of Parliament.

481 Subsections (6) and (7) provide that the Secretary of State may use these powers to make different provision and that this must be done by statutory instrument.

### Clause 63: Short title

482 This clause establishes the short title of the Bill as the Border Security, Asylum and Immigration Bill 2025.

## Commencement

483 Clause 58(3) provides for those clauses which will come into force on Royal Assent of this Bill. The regulation making powers set out in clause 60 will also come into force on Royal Assent. The remaining provisions will be brought into force by commencement regulations made by the Secretary of State

## Financial implications of the Bill

484 The monetised net impact is estimated to be a total -£10.4 million to -£20 million net present social value (NPSV) from the measures contained within the bill, with a central estimate of £-13.6 million over the 10-year appraisal period. There are significant non-monetisable benefits if measures achieve their intended impact which may impact on public expenditure, this includes, but not limited to, the use of public services and the cost of the asylum system.

## Parliamentary approval for financial costs or for charges imposed

485 A money resolution was agreed to in the House of Commons the Bill on 10 February 2025 to authorise any public expenditure arising out of the creation of the statutory office of the Border Security Commander (clauses 1 to 12 of the Bill) and in relation to additional expenditure incurred as a result of the new search and seizure powers conferred by clauses 19 to 26 of the Bill.

486 The Bill required a ways and means resolution which was agreed to on 12 May 2025 in the House of Commons. This is in relation to the fees that will be charged by the Immigration Services Commissioner, outlined in clause 40.

## Compatibility with the European Convention on Human Rights

487 The Government considers that the Bill is compatible with the European Convention on Human Rights. The Rt Hon Lord Hanson of Flint, Minister of State for the Home Department has made, has made a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect.

## Environment Act 2021

488 The Rt Hon Lord Hanson of Flint, Minister of State for the Home Department has made is of the view that the Bill as brought from 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 is made..

## Trade between Northern Ireland and the rest of the UK

489 The Hon Lord Hanson of Flint, Minister of State for the Home Department , is of the view that the Bill as brought from the House of Commons does not contain provision which, if enacted, would affect trade between Northern Ireland and the rest of the United Kingdom. Accordingly, no statement under section 13C of the European Union (Withdrawal) Act 2018 has been made..

## Related documents

490 The following document is relevant to the Bill and can be read at the stated location:

- Delivering Border Security Statement, [Delivering Border Security](#), HM Government, December 2024

## Annex A – 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?	LCM process engaged?	Extends and applies to Scotland?	LCM process engaged?	Extends and applies to Northern Ireland?	LCM process engaged?
Clauses 1-12	Yes	Yes	No	Yes	No	Yes	No
Clauses 13-18	Yes	Yes	No	Yes	No	Yes	No
Clauses 19-26	Yes	Yes	No	Yes (except for police constables)	No	Yes (except for police constables)	No
Clauses 27-29	Yes	Yes	No	Yes	No	Yes	No
Clauses 30-33	Yes	Yes	No	Yes	No	Yes	Yes
Clauses 34-35	Yes	Yes	No	Yes	No	Yes	No
Clause 36	No	No	No	Yes	No	No	No
Clause 37-39	Yes	Yes	No	Yes	No	Yes	No
Clause 40 and Sch 1	Yes	Yes	No	Yes	No	Yes	No
Clause 41	Yes	Yes	No	Yes	No	Yes	No
Clause 42	Yes	Yes	No	Yes	No	Yes	No
Clause 43	Yes	Yes	No	Yes	No	Yes	No
Clause 44	Yes	Yes	No	Yes	No	Yes	No
Clause 45	Yes	Yes	No	Yes	No	Yes	No
Clause 46-47	Yes	Yes	No	Yes	No	Yes	No
Clause 48	Yes	Yes	No	Yes	No	Yes	No
Clause 49-51	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 52-56 and Sch 2	Yes	Yes	No	No (except for terrorism cases under clause 53; electronic monitoring under clause 52; and breach of an interim SCPO in non-	Yes (breach of an interim SCPO in non-terrorism cases)	No (except for terrorism cases under clause 53; electronic monitoring under clause 52; and breach of an interim	Yes (breach of an interim SCPO in non-terrorism cases)

*These Explanatory Notes relate to the Border Security, Asylum and Immigration Bill as brought from the House of Commons on 13 May 2025 (HL Bill 101)*

				terrorism cases under clause 53)		SCPO in non-terrorism cases under clause 53)	
Clause 57	Yes	Yes	Yes	Yes	Yes	Yes	Yes

## Subject matter and legislative competence of devolved legislatures

491 There is a convention (“the Sewel Convention”) that the UK Parliament 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).

492 The following provisions in the Bill involve the UK Parliament legislating for a matter that is within the legislative competence of a devolved legislature, and engage the Legislative Consent Motion process under the Sewel Convention:

- a. Supply of trailer registration information (clauses 30-33) will engage the LCM process in Northern Ireland.
- b. Offences relating to things for use in serious crime (clauses 49-51) will engage the LCM process in Scotland and Northern Ireland.
- c. Measures relating to the breach of an Interim Serious Crime Prevention Order in non-terrorism cases (clause 53) will engage the LCM process in Scotland and Northern Ireland.
- d. Validation of fees charged in relation to qualifications (clause 57) will engage the LCM process in Wales, Scotland and Northern Ireland.

493 If there are any 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.





# **BORDER SECURITY, ASYLUM AND IMMIGRATION BILL**

## **EXPLANATORY NOTES**

These Explanatory Notes relate to the Border Security, Asylum and Immigration Bill as brought from the House of Commons on 13 May 2025 (HL Bill 101).

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