

BORDER SECURITY, ASYLUM AND IMMIGRATION BILL

Memorandum from the Home Office to the Delegated Powers and Regulatory Reform Committee

INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Border Security, Asylum and Immigration Bill (“the Bill”). The Bill was brought forward from the House of Commons and introduced in the House of Lords on 13 May 2025.
2. This memorandum identifies the provisions of the Bill which confer new or amended powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

PURPOSE AND EFFECT OF THE BILL

3. The Bill makes provision for a variety of measures relating to border security, asylum and immigration, falling into four pillars.
4. Pillar 1 provides the framework which enables the Border Security Commander, and the Border Security Command (BSC), to fulfil their role as an effective border security system leader, cohering and driving improvements to the collective response to current and future threats.
5. Pillar 2 expands data sharing capabilities between government departments and agencies to assist in developing the intelligence picture for organised immigration crime (OIC) and other threats to UK border security. The improved sharing of data will enhance abilities to identify risks, whether for policing, customs, immigration, or wider law enforcement (OIC and/or serious and organised crime) purposes; as well as to prevent the loss of human life.
6. Pillar 3 creates new and enhanced measures to strengthen border security. This includes an array of new, stronger powers for law enforcement agencies to investigate and prosecute OIC, and it provides additional deterrents and penalties for criminals involved in OIC. Pillar 3 also introduces new and enhanced tools that will allow for faster interventions against those suspected of being involved in serious and organised crime and enables restrictions to be placed on them.
7. Pillar 4 introduces new, additional measures to support and strengthen the UK’s immigration and asylum system. The Bill repeals the Safety of Rwanda (Asylum and Immigration) Act 2024 and parts within the Illegal Migration Act 2023. In addition, the Bill includes measures which relate to the Immigration Services Commissioner (“ISC”). The ISC regulates those who are not regulated by another regulator and who provide immigration advice and immigration services, protects the vulnerable from the risks and dangers of illegal advice or poor service and works to improve the quality of advice; the ISC ensures its advisers are fit and competent and act in the best interest of their clients.

8. To support the government's border security, asylum and immigration policy objectives and to ensure the ability to adapt to future threats to border security, the Bill includes a number of delegated powers. In general terms, the bulk of the powers will allow for proportionate changes to the environment in which partners across the border security, immigration and law enforcement systems operate. Where possible, regulation-making powers are subject to consultation requirements.

DELEGATED POWERS

9. The Bill includes the following measures which contain new or amended delegated powers:
- i. Supplying and handling articles for use in immigration crime;
 - ii. Powers of search and seizure in relation to electronic devices;
 - iii. Sharing of trailer registration information;
 - iv. Extension of personnel who can take biometric information;
 - v. New criminal offences to criminalise the making, adapting, importing, supplying, offering to supply and possession of articles for use in serious crime
 - vi. New powers to strengthen the operation of Serious Crime Prevention Orders; and
 - vii. New powers for the ISC.

Analysis of delegated powers by clause

Clause 15(3) - Power to add to the list of articles which are not relevant articles for the purposes of the supply and handling of articles for use in immigration crime offences

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Draft affirmative procedure

Context and Purpose

10. Clause 13 creates an offence in relation to supplying articles for use in immigration crime. Clause 14 creates an offence in relation to handling articles for use in immigration crime. Clause 15(1) provides that for the purposes of these offences, "relevant article" means anything or substance other than the items listed in paragraph (a) to (h).

11. Clause 15(3) confers a power on the Secretary of State by regulations to add items or substances to that list, and to make provision which is consequential on provision made under 15(3) to add any items or substances to that list.

Justification for taking the power

12. The power to add to the list is required so that, if necessary, in view of the policy objective that it should not be an offence to supply or handle articles listed in clause 15(1), it is possible to add items to the list if appropriate to do so in the

future to ensure that the list of items carved out from the offence remains up to date and relevant with any changes to methods of irregular entry to the UK and any technological updates to life saving equipment. The power to make provision which is consequential on adding any items or substances would, for example, enable the addition of a new subsection in the clause if a new item or substance being added to subsection 15(1) required a definition. It would also enable, if appropriate, in light of any item or substance to be added, subsection 15(2) to be amended so that it were to apply in relation to the new item or substance.

Justification for the procedure

13. The regulation-making power in clause 15(3) is subject to the draft affirmative procedure. This is considered appropriate as this power, if exercised, would change the scope of a criminal offence. The draft affirmative procedure is also appropriate given that this is a Henry VIII power. Parliament should have the opportunity to debate and approve any new articles that the power would allow to be added to the list in clause 15(1).

Clause 25(1)(a) and (b) – Power through regulations to make references to an authorised officer or an immigration officer, to include a person of a description specified in the regulations and permit the use of reasonable force in the exercise of any function

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Negative procedure

Context and Purpose

14. Clauses 19 to 26 create powers for immigration officers and police constables (who receive authorisation by a police officer of at least the rank of inspector in England and Wales) (“authorised officers”) to search persons who have arrived or entered the UK in the way described in clause 19(3) for anything which appears to an 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. Those clauses also create powers of retention and use in relation to such items, alongside powers for immigration officers to pass on articles to other law enforcement in certain circumstances.

15. Clause 25 creates two new powers:

- a. Clause 25(1)(a) gives the Secretary of State the power through regulations to provide that references to an authorised officer or an immigration officer in the provisions in relation to electronic devices include a person of a description specified in the regulations. Clause 25(2) provides that the descriptions of person that may be so specified include persons designated by the Secretary of State in accordance with the regulations.
- b. Clause 25(1)(b) gives the Secretary of State power through those regulations to provide that a person so specified may, if necessary, use

reasonable force in the exercise of any function conferred by virtue of the regulations. Immigration officers are already empowered, if necessary, to use reasonable force by section 146 of the Immigration and Asylum Act 1999. Clause 20(9) also provides this power for constables.

16. Clause 25(3) provides that where persons are designated by the Secretary of State as mentioned in subsection (2), the regulations must contain such safeguards relating to the designation as the Secretary of State considers appropriate.

Justification for taking the power

17. The Home Office's policy intention is that the new provisions will be made available immediately to authorised officers. However, it wishes to preserve the ability to expand the scope of those who can use the powers. This will enable the Secretary of State in the future to authorise other cohorts of officials, to use the powers if that proves necessary and appropriate. There are analogous powers (exercisable administratively rather than via secondary legislation) that enable the Secretary of State to confer certain coercive powers on other specified categories of person, see 25CA to 25CC of Schedule 2 to the Immigration Act 1971 for example paragraphs.

Justification for the procedure

18. The negative procedure is considered to afford an appropriate level of parliamentary scrutiny. Any regulations made would not create any new powers but would extend the cohort of people who can use them. Additionally, clause 25(3) provides that if any such regulations include persons designated by the Secretary of State, the regulations must contain such safeguards relating to the designation of persons as the Secretary of State considers necessary.

Clause 33(8) – Power to make regulations “specifying purposes related to policing” for which information may be supplied under clauses 30(7)(a) and 31(1)(a)(iii)

<i>Power conferred on:</i>	Secretary of State
<i>Power exercised by:</i>	Regulations made by statutory instrument
<i>Parliamentary Procedure:</i>	Draft affirmative procedure

Context and Purpose

19. Clause 33(8) gives the Secretary of State the power to specify in regulations any purposes related to policing for which the Secretary of State for Transport may supply trailer registration information to a UK Authorised Person (specified persons within UK police bodies), and for which recipients of trailer registration information may further disclose that information to a person exercising public functions. A UK Authorised Person is defined by reference to a table set out at 33(3), which lists a range of recipients who are members of UK policing bodies.

20. The Home Office policy intention is to define the purposes related to policing in-line with paragraph 1.6 of the [Police information and records management \(PIRM\) Code of Practice](#) (published July 2023); section 5 of the [Code of Practice for the Police National Computer \(PNC\) and the Law Enforcement Data Service \(LEDS\)](#) (published February 2023); and as set out in part 1 of the [Police Service of Northern Ireland \(PSNI\) Service Policy on Information Management \(SP0816\)](#) (published October 2016). The Codes were laid before Parliament pursuant to Section 39A(5) of the Police Act 1996. Both Codes and the PSNI Service Policy contain a common core definition of police purposes as follows:

- protecting life and property
- preserving order
- preventing the commission of offences
- bringing offenders to justice
- any other police duty or responsibility arising from common or statute law.

21. The Home Office wishes to preserve the ability to amend the scope of those policing purposes in line with wider developments in policing policy that may occur from time to time – including to the above Codes – and therefore requires a regulation-making power. This will enable the Secretary of State in future to use this power, with the consent of Parliament, if necessary and appropriate to do so.

Justification for taking the power

22. The reason for taking this power is two-fold:

- a) Firstly, defining “purposes related to policing” in regulations, rather than on the face of the Bill, will mitigate the risk of unintended consequences. While there is a recognised core definition of “purposes related to policing” in both the Codes of Practice and the Service Policy referred, there is no such definition to be found in primary legislation. The policy intention is not to fill this void and risk unintended consequences, such as the definition being read across to wider police law in the UK. This measure is intended to relate only to the supply of trailer registration information taking this power will help ensure that this is clear.
- b) Secondly, the ability to update the list by way of regulations will enable the legislation to keep step with any changes that are made to policing codes of practice. This will help avoid unnecessary inconsistencies across the definitions that may emerge between those applicable to the trailer registration data, and the Codes of Practice regulating police information and records management, and the Law Enforcement Data System (LEDS), respectively. LEDS will be the principal system through which trailer registration data will be made available to the police (in-line with clause 30(7)). Were the Secretary of State minded to amend the definition of the purposes related to policing in the Codes of Practice, the ability to dynamically amend the same with respect to trailer registration information will be vital to avoiding a divergence in operational definitions by putting draft regulations to Parliament at a similar time.

Justification for the procedure

23. Clause 33(9) will place a duty on the Secretary of State to consult such persons as they consider appropriate before exercising this power. Furthermore, the regulation making power will be subject to the affirmative procedure, which will ensure an appropriate level of parliamentary scrutiny.

Clause 44(2)(b) - Prescribe through regulations ‘other authorised persons’ to capture biometric information

<i>Power conferred on:</i>	Secretary of State
<i>Power exercised by:</i>	Regulations made by statutory instrument
<i>Parliamentary Procedure:</i>	Negative procedure

Context and Purpose

24. Section 141 of the Immigration and Asylum Act 1999 (fingerprinting) is amended to confer a power on the Secretary of State to designate additional persons as an authorised person who can take fingerprints from foreign nationals under the section.

Justification for taking the power

25. The principal policy objective is to create greater legislative flexibility as to the persons that can be designated an authorised person, with the aim of providing greater resilience in biometric information capturing capabilities during a crisis/at times of high demand. The measures might be used, for example, to add trained Armed Forces personnel to the list of authorised persons so that they can take biometric information when facilitating an evacuation.

Justification for the procedure

26. This is to ensure a quick response to emergency situations. This power would have proved helpful following the evacuation from Afghanistan in August 2021, when a large number of people’s biometrics needed to be enrolled when they arrived at the UK’s border. If an affirmative approach was adopted, changes may not be capable of being implemented quickly, affecting the ability to adapt as quickly as needed.

Clause 50(3), (4) and (5) - Power to amend meaning of “relevant article” for use in serious crime

<i>Power conferred on:</i>	Secretary of State
<i>Power exercised by:</i>	Regulations made by statutory instrument
<i>Parliamentary Procedure:</i>	Draft affirmative procedure

Context and Purpose

27. Clause 49(1) and (2) create two new criminal offences:

- a. An offence of possessing a relevant article in circumstances which give rise to a reasonable suspicion that the relevant article will be used in connection with any serious offence; and
 - b. An offence of importing, making, adapting, supplying or offering to supply a relevant article in circumstances which give rise to a reasonable suspicion that the relevant article will be used in connection with any serious offence. Serious offence means an offence specified or described in Schedule 1 of the Serious Crime Act 2007.
28. It is a defence for a person charged with one of these offences to show that they did not intend or suspect that the relevant article would be used in connection with a serious offence.
29. Clause 50(1) defines a relevant article for the purpose of these new offences, namely:
- any document that may be used in conjunction with a 3D printer to produce any part of a firearm;
 - encapsulators or pill presses used to produce tablets or capsules;
 - a vehicle concealment that forms part of or is intended to form part of a vehicle that conceals people or things.
30. Manufacturers, modifiers, and suppliers profit from the supply of such articles that could then be used by criminals to commit serious crime. These articles will change over time as technology changes. Clause 50(3), (4) and (5) will enable the Secretary of State, by regulations, to amend this section so as to add to or amend the list of relevant articles for the purposes of the offences in clause 49(1) and (2). Clause 50(4) provides that relevant articles may only be added to the list if the Secretary of State considers that there is a significant risk of such an article being used in connection with any serious offence as set out in clause 49(1) and (2).

Justification for taking the power

31. The Bill provides on its face for new offences criminalising the possession, importing, making, modifying, supplying, offering to supply of a relevant article in circumstances which give rise to a reasonable suspicion that the relevant article will be used in connection with any serious offence. It further contains a list of relevant articles for the purpose of the offences. Given the dynamic and fast-paced nature of technological development and the readiness of criminals to exploit new opportunities to engage in crime, it is considered appropriate that the Secretary of State should have the ability to update the definition of a relevant article for the purposes of the offences through secondary legislation. This delegated power would ensure that the list of specific articles used in serious crime remains up to date by enabling the government to amend the specified list. This will allow the list to be kept up to date in response to the actions of individuals who facilitate and commit serious crime and changes in criminal tactics.
32. Regular consultation will take place with all stakeholders including law enforcement agencies to identify tools or articles which enable serious crime to take place which are not captured under existing legislation. Each article will be

considered carefully, examining the effects of listing new articles under this legislation and the impact it would have on the public, specifically exploring the effects on those with protected characteristics, ensuring law abiding individuals and/or legitimate organisations are not disproportionately affected.

Justification for the procedure

33. The regulation-making power in clause 50(3), (4) and (5) is subject to the draft affirmative procedure. This is considered appropriate as this power will amend the scope of a criminal offence; the draft affirmative procedure is also appropriate given that this is a Henry VIII power. Parliament should have the opportunity to debate and approve any new articles that would be added to this criminal offence before they take effect, given the impact that this could have on citizens.

Clause 52(2) – New section 5B(4) of the Serious Crime Act 2007: Power to specify description of “responsible person”

<i>Power conferred on:</i>	Secretary of State
<i>Power exercisable by:</i>	Regulations made by statutory instrument
<i>Parliamentary procedure:</i>	None

Context and purpose

34. By Part 1 of the Serious Crime Act 2007 (“the 2007 Act”) provides for Serious Crime Prevention Orders (“SCPOs”). 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 or disrupt their involvement in serious crime. There is an indicative list of “serious offences” in Schedule 1 to the 2007 Act to which an SCPO can be applied. A “person” includes bodies corporate, partnerships and unincorporated associations as well as individuals. 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 travel.
35. Clause 52(2) amends the provisions relating to SCPOs to allow for the court to expressly attach an electronic monitoring requirement to an order. An electronic monitoring requirement may be imposed to support the monitoring of an individual’s compliance with other requirements of the order (for example, where an exclusion/inclusion zone or a curfew are imposed). Electronic monitoring is undertaken using an electronic tag usually fitted to a person’s ankle.
36. The tag worn by the person transmits data to a monitoring centre where it is processed and stored. The monitoring centre, operated by a “responsible person”, reviews this data to see whether an individual being electronically monitored is complying with the conditions of the SCPO. Where a person has failed to comply, the responsible person provides information to the relevant authority, in this case the police, responsible for the enforcement of the order.
37. The 2007 Act, as amended by clause 52(2), sets out further provision about electronic monitoring requirements. New section 5B(3) of the 2007 Act provides

that an SCPO which includes an electronic monitoring requirement must specify the person who is responsible for the monitoring (“the responsible person”). New section 5B(4) of the 2007 Act provides that the responsible person must be of a description specified in regulations made by the Secretary of State. There is precedent in legislation for this approach. Similar enabling powers are contained in, for example, section 3AC(2) of the Bail Act 1976, section 215(3) of the Criminal Justice Act 2003 and section 37(7) of the Domestic Abuse Act 2021. The relevant statutory instrument made under the first two of those powers is the Criminal Justice (Electronic Monitoring) (Responsible Person) Order 2017 (SI 2017/235).

Justification for the power

38. The regulations will provide a description of the person with whom the Secretary of State has made arrangements for providing the electronic monitoring services for the purposes of the SCPO regime. Providing a description of the responsible person is properly an administrative procedure. For that reason, the designation of the responsible person is considered an appropriate matter for secondary legislation.

Justification for the procedure

39. The regulations made under new section 5B(4) of the 2007 Act are not subject to any Parliamentary procedure (see section 89 of the 2007 Act as amended by clause 52(6)). The primary purpose of these regulations is simply to put into the public domain the name of one or more persons contracted to provide electronic monitoring services for the purposes of SCPOs. As set out above, the selection of the contractor(s) is properly an administrative matter for the executive. Given this, no form of Parliamentary scrutiny is considered necessary. This mirrors the approach taken in the analogous delegated powers in section 3AC(2) of the Bail Act 1976, section 215(3) of the Criminal Justice Act 2003 and section 37(7) of the Domestic Abuse Act 2021.

Clause 52(2) – New section 5D(1) of the Serious Crime Act 2007: Duty to issue code of practice relating to data from electronic monitoring

<i>Power conferred on:</i>	Secretary of State
<i>Power exercisable by:</i>	Statutory code of practice
<i>Parliamentary procedure:</i>	None

Context and purpose

40. The amendments to the 2007 Act made by clause 52(2) include a power for the court to attach to an SCPO an electronic monitoring requirement. Clause 52(2) inserts a new section 5D into the 2007 Act which requires the Secretary of State to issue a code of practice on the processing of data gathered in the course of an electronic monitoring requirement of an SCPO.
41. The processing of such data will be subject to the requirements in the UK General Data Protection Regulation and the Data Protection Act 2018. The code of practice issued under new section 5D of the 2007 Act is intended to set out the

appropriate tests and safeguards for the processing of such data, in order to ensure compliance with the data protection legislation. For example, the government envisages that the code will set out the length of time for which data may be retained and the circumstances in which it may be permissible to share data with the police to assist with crime detection. It is intended that the code will cover the collection, retention and sharing of personal data gathered under a requirement that is imposed for the purpose of monitoring compliance with another requirement.

42. Similar provision for a code of practice in respect of the processing of data from electronic monitoring is included in section 215A of the Criminal Justice Act 2003 (as inserted by the Crime and Courts Act 2013). Section 51 of the Domestic Abuse Act 2021 also makes similar provision in relation to Domestic Abuse Prevention Orders.

Justification for the power

43. The government considers that a code of practice is the most appropriate vehicle to set out expectations and responsibilities in relation to the processing of data gathered under the electronic monitoring requirement. There is a range of statutory guidance issued each year and it is important that guidance can be updated to keep pace with such changes and with operational good practice.

Justification for the procedure

44. Given the likely content and nature of the code, the fact that it will not define or create new legal responsibilities and that the processing of data must be in accordance with the requirements of data protection legislation, the government does not consider it is necessary for the code to be subject to any Parliamentary procedure. This approach is consistent with the code provided for in section 215A of the Criminal Justice Act 2003 and section 51 of the Domestic Abuse Act 2021.

Clause 55(3) - New paragraph 2(5)(j) of Schedule 1A of the Serious Crime Act 2007: Power to add to the list of notification requirements

<i>Power conferred on:</i>	Secretary of State
<i>Power exercised by:</i>	Regulations made by statutory instrument
<i>Parliamentary Procedure:</i>	Draft affirmative procedure

Context and purpose

45. Clause 55(2) and (3) insert new section 15A and Schedule 1A into the Serious Crime Act 2007 which require a person subject to an SCPO to supply certain information to the police and keep such information up to date. Failure to do so without reasonable excuse, or knowingly supplying false information, is an offence (new paragraph 3 of Schedule 1A). The relevant information is the person's name (if the person uses one or more other names, each of those names); home address (and the address of any other premises in the United Kingdom at which the person regularly resides or stays); telephone numbers and email addresses; usernames for a social media service including video games; identifying

information of motor vehicles kept or routinely used by the person; specified financial information; specified information about identification documents; the name and address of each of the person's employer (new paragraph 2(5)(a) to (i)).

46. Such information will assist law enforcement agencies in monitoring the person's compliance with the provisions of the SCPO and assessing the risk they may pose to the public. Additionally, standardising notification requirements helps to ensure greater consistency in the way individuals are managed, including improving law enforcement agencies' ability to share information with each other and manage SCPO cases proactively. New paragraph 2(5)(j) of Schedule 1A enables the Secretary of State, by regulations, to specify further categories of information which persons subject to an SCPO must notify to the police.

Justification for the power

47. The previous government published a public consultation¹ on improving law enforcement agencies' response to serious and organised crime. It sought views on which personal details should be provided under the notification requirements for those subject to an SCPO, including most of those listed above. Current notification requirements can, but need not, include all the information listed above as part of the stipulations of an SCPO on a case-by-case basis.
48. Most consultation respondents agreed with the previous government's proposal that all SCPOs automatically include a prescribed set of notification requirements and agreed with all the suggested notifications requirements. Many respondents highlighted that standardising notification requirements would create consistency and enable effective monitoring by law enforcement agencies, whilst enabling the courts to retain the flexibility to impose additional notification requirements where necessary. Those respondents who disagreed with the proposal suggested that no prescribed notifications should be imposed, with all requirements to be selected on the basis that they were necessary and appropriate to the offending history of the subject in each case.
49. There are notification regimes in Part 2 of the Sexual Offences Act 2003 in respect of sex offenders and Part 4 of the Counter-Terrorism Act 2008 (as amended by the Counter-Terrorism and Border Security Act 2019) in respect of terrorism offenders. Both these regimes require a wide range of information to be provided by those subject to the notification requirements. There is also a notification regime in Part 3 of the Domestic Abuse Act 2021, in respect of a person who has abused a person aged 16 or over to whom they are personally connected. The differing notification requirements reflect the different nature of these crimes. The government has selected the notification requirements that are most appropriate for individuals subject to SCPOs, reflecting the breadth of serious and organised crime.
50. The government will continue to work with law enforcement and criminal justice partners to consider additional notification requirements. A power to add to the notification requirement by regulations will enable the list to be amended in the light of operational experience and as technology and criminal activity change.

¹ [Consultation document \(accessible\) - GOV.UK](#)

51. This approach has its precedents. There are comparable powers in section 83(5)(h) of the Sexual Offences Act 2003 and section 47(2)(h) of the Counter-Terrorism Act 2008.

Justification for the procedure

52. By virtue of section 89(3) of the 2007 Act, as substituted by clause 55(7) regulations made under new paragraph 2(5)(j) of Schedule 1A are subject to the affirmative procedure. The affirmative procedure is considered appropriate given that such regulations would enable the Secretary of State to add to the notification requirements on persons subject to an SCPO, which would not have previously been considered by Parliament and which might be applied to individuals who have not been convicted of any offence. Moreover, a failure to comply with any notification requirement, including any additional notification requirement, would constitute a criminal offence punishable on conviction with imprisonment of up to five years. The analogous powers under the Sexual Offences Act 2003 and the Counter-Terrorism Act 2008 are also subject to the affirmative procedure.

Clause 59(1) – Power to make consequential amendments

<i>Power conferred on:</i>	Secretary of State
<i>Power exercised by:</i>	Regulations made by statutory instrument
<i>Parliamentary Procedure:</i>	Negative procedure (if it does not amend primary legislation), otherwise affirmative procedure

Context and Purpose

53. Clause 59(1) confers a power on the Secretary of State to make consequential provision for the purposes of the Bill. Such provision may include repealing, revoking or otherwise amending primary and secondary legislation. It therefore includes a Henry VIII power.

Justification for taking the power

54. The powers conferred by this clause are wide, but they are limited by the fact that any amendments made under the regulation-making power must be consequential on provisions made by or under the Bill. There are various precedents for such provisions, including section 84(2) of the Nationality and Borders Act 2022. The Bill already includes some changes to other enactments as a consequence of the substantive provisions in the Bill, but it is possible that not all of the necessary consequential amendments have been identified in the Bill's preparation. The Home Office considers it appropriate to enable consequential amendments to be made by regulation in order to ensure that the changes effected by this Bill can be effectively delivered, mitigating the risk of undermining the effective operation of the provisions in the Bill if a provision were missed.

Justification for the procedure

55. If regulations under this clause do not repeal, revoke or otherwise amend primary legislation they will be subject to the negative procedure. If regulations under this clause amend or repeal provision in primary legislation, they will be subject to the affirmative procedure as befitting a Henry VIII power of this type. It is considered that this provides the appropriate level of parliamentary scrutiny for the powers conferred by this clause.

Clause 62(1) - Power to bring certain provisions of the Bill into force by commencement regulations

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: None

Context and Purpose

56. Clause 62(1) contains a standard power for the Secretary of State to bring certain provisions of the Bill into force by commencement regulations.

Justification for taking the power

57. Leaving provisions in the Bill to be brought into force by regulations will afford the necessary flexibility to commence the provisions of the Bill at the appropriate time, having regard to the need to make any necessary secondary legislation, issue guidance, undertake appropriate training and put the necessary systems and procedures in place, as the case may be.

Justification for the procedure

58. As is usual with commencement powers, regulations made under this clause are not subject to any parliamentary procedure. The principle of the provisions to be commenced will already have been considered by Parliament during the passage of the Bill. Commencement by regulations enables the provisions to be brought into force at a convenient time.

Clause 62(5) - Power to make transitional, transitory or saving provisions

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: None

Context and Purpose

59. Clause 62(5) confers on the Secretary of State the power to make such transitional, transitory or saving provisions as they consider appropriate in connection with the coming into force of the provisions in the Bill, including the power to make different provision for different purposes or areas.

Justification for taking the power

60. This standard power ensures that the Secretary of State can provide a smooth commencement of new legislation and transition between existing legislation and the Bill, without creating any undue difficulty or unfairness in making these changes. There are numerous precedents for such a power.

Justification for the procedure

61. Such a power is commonly included as part of a Bill's power to make commencement regulations and such regulations are not usually subject to any parliamentary procedure on the grounds that Parliament has already approved the principle of the provisions in the Bill by enacting them.

Schedule 1, 2 – Power to amend definition of “relevant matters”

<i>Power conferred on:</i>	Secretary of State
<i>Power exercised by:</i>	Regulations made by statutory instrument
<i>Parliamentary Procedure:</i>	Affirmative procedure (the amendment will be added to section 166(5) (regulations subject to the affirmative procedure) of the Immigration and Asylum Act 1999 (“IAA 1999”))

Context and Purpose

62. Clause 2 to Schedule 1 inserts new subsections into section 82 of Part V of the IAA 1999 to allow “*relevant matters*” to be brought in and out of regulatory oversight by regulation.
63. Section 82(1) of the IAA 1999 defines “*immigration advice*” as advice relating to a particular individual given in connection with one or more “*relevant matters*” by a person who knows they are giving such advice. Within the same provision, the definition of “*immigration services*” means the making of representations on behalf of a particular individual in connection with one or more relevant matters.
64. “*Relevant matters*” are currently defined in section 82(1) IAA 1999 as an exhaustive list and include areas of immigration law and policy such as claims for asylum and applications for permission to enter or stay in the UK.
65. The power is intended to amend the definition of “*relevant matters*” to add to and remove certain matters from the exhaustive list in primary legislation.

Justification for taking the power

66. The rationale for the ability to amend “*relevant matters*” by way of secondary legislation is that it will allow the Immigration Services Commissioner (ISC) to respond more promptly and flexibly to changes in the sector which they feel warrant their regulation.

67. Waiting for a suitable legislative vehicle to make any changes to the list is time consuming and can introduce unnecessary delay, negatively impacting regulation because the ISC is unable to investigate or sanction abuse by immigration advisers unless it relates to a “*relevant matter*”; and there must be clarity on the activities that require a regulated immigration adviser.
68. As a general comment, the list of “*relevant matters*” has been amended frequently, and there is nothing to suggest that this would not continue. Recent earlier amendments to the list were at EU Exit, removing sections that pertained to the membership of the EU, and the addition of Electronic Travel Authorisations following the introduction of the Nationality and Borders Act 2022.
69. The ability to make changes to “*relevant matters*” by secondary legislation will allow the Secretary of State to respond at pace to the changing immigration landscape, thereby enhancing the powers of the ISC to better disrupt poor and illegal practice by immigration advisers and ensure that the ISC is an efficient and effective regulator.

Justification for the procedure

70. As this delegated power will amend primary legislation (in other words, it is a Henry VIII power), appropriate safeguards need to be implemented. The affirmative procedure will provide for adequate scrutiny between both Houses to ensure that any exercise of that power is proportionate.
71. The affirmative procedure provides the appropriate balance between the scrutiny requirements of Parliament and the business needs of Government. It will ensure the definition of “*relevant matters*” is monitored and updated promptly, protecting the most vulnerable from immigration advisers who are abusing the system, but also providing clarity to the immigration advice sector when new processes or routes are introduced to ensure support to vulnerable advice seekers.

Schedule 1, 7, 8 – Provision of immigration advice or immigration services under supervision

<i>Power conferred on:</i>	Secretary of State
<i>Power exercised by:</i>	Regulations made by statutory instrument
<i>Parliamentary Procedure:</i>	The negative procedure will apply to the regulations as a result of section 166(6) of the Immigration and Asylum Act 1999 (“IAA 1999”)

Context and Purpose

72. Clauses 7 and 8 to Schedule 1 amend s.84 of Part V of the IAA 1999 to insert new s.84A to amend the circumstances in which someone is permitted to provide immigration advice and services under s.84(2)(e) IAA 1999 whilst acting under the supervision of a person who is “qualified” pursuant to s.84(2) IAA 1999.

73. S.84(2) IAA 1999 sets out that no person may provide immigration advice unless they are a qualified person. Those who provide immigration advice who are not qualified can be subject to criminal sanctions under s.84(1) IAA 1999.
74. Qualified persons are those registered by the ISC, or those who are authorised to provide immigration advice and services by other regulators or professional bodies such as the Solicitors Regulation Authority, the Law Society of Scotland, the Law Society of Northern Ireland, the Bar Standards Board (or Scottish and Northern Ireland equivalents) or the Chartered Institute of Legal Executives under s.84(2) IAA 1999.
75. It has been observed that individuals who do not meet the definition of a “qualified person” under s.84(2)(a)(ba) IAA 1999 (because, for example, they have had their registration with the ISC suspended, or they have been struck off from practising with a legal regulator) have been continuing to practise under supervision, given that they can be a “qualified person” on this basis without being directly registered with the regulators mentioned above. It follows that via this supervision ‘loophole’, individuals who are not fit to practice can exploit both the immigration advisory system and the vulnerable people who seek support through it.
76. A person may/may not be entitled to provide immigration advice/services under supervision pursuant to s.84(2)(e) IAA 1999 where they have been subject to certain “sanctions”. These sanctions will either be (i) set out on the face of the Bill as those imposed under the IAA 1999 or (ii) set out in regulations to include those imposed under the individual regulatory frameworks of the legal regulators who authorise persons under s.84(2) IAA 1999.
77. Where the sanctions are set out in non-IAA 1999 legislation, or under the specific frameworks of the legal regulators mentioned at s.84(2) IAA 1999, a power to make regulations to set out those sanctions is required. The power is inserted by paragraph 8 of Schedule 1 by inserting a new section 84B into the IAA 1999.

Justification for taking the power

78. By referring generically to the sanctions by other legal regulators, it will not be clear enough to enable a person who wishes to work under supervision to know whether they can do so. This is particularly important given the criminal sanctions that apply to breaches of s.84(1) IAA 1999 (see s.91 IAA 1999).
79. Given the extensive number of applicable sanctions, setting them out as an exhaustive list would provide for far greater detail than is usually set out in primary legislation, even if these provisions were to be included within a Schedule. Additionally, the general language of those sanctions could become out of date following changes to the regulatory arrangements of any of the identified regulators.
80. It is intended to confer on the Secretary of State a power to specify in regulations the sanctions set out in the legislation or regulatory rules of the regulators which govern legal professionals under which a person is/is not prohibited from providing immigration advice or immigration services by virtue of s.84(2)(e) IAA 1999.

81. This will ensure that the list of applicable sanctions is kept up to date in line with any future changes to legislation or the regulatory arrangements established by those regulators.
82. Additionally, s.86 IAA 1999 allows the Secretary of State by order to add or remove a body from the list of “Designated professional bodies” and s.86A IAA 1999 contains equivalent powers to amend the list of “Designated qualifying regulators”. Equally, this will ensure that the list of sanctions is in-keeping with the types of bodies under which an individual can be authorised to give immigration advice/services as a “qualified person” pursuant to s.84(2) IAA 1999.

Justification for the procedure

83. Given that the sector will be consulted in depth prior to the list of sanctions being produced or amended to ensure that the regulations are appropriate and effective, the negative procedure is considered to afford an appropriate level of Parliamentary scrutiny.
84. The negative procedure allows the necessary flexibility to refer to an evolving list of sanctions with speed, as well as giving Parliament, the general public and immigration advisers an appropriate period of notice before being subject to any effect.

Schedule 1, 9 – Power to impose monetary penalties

<i>Power conferred on:</i>	Secretary of State
<i>Power exercised by:</i>	Regulations made by statutory instrument
<i>Parliamentary Procedure:</i>	The affirmative procedure as a result of section 166(5) of the Immigration and Asylum Act 1999 (“IAA 1999”)

Context and Purpose

85. Clause 9 to Schedule 1 inserts six new sections after section 92B of Part V of the IAA 1999 to allow the ISC to impose monetary penalties on people providing immigration advice or immigration services in certain circumstances, and to make provisions around the procedure, appeals, enforcement, guidance and proceeds.
86. The monetary penalty regime will give the ISC the option of applying either a fixed or variable penalty, depending on the breach that has occurred.
87. New section 92C(3) provides the Secretary of State with the power to specify, by regulations, the amount payable under a fixed penalty notice.
88. New section 92C(7) provides that the amount specified (i) in a fixed penalty (as established in regulations) and (ii) in a variable penalty notice, must not exceed (a) in the case of a penalty imposed on an unqualified person who has committed an offence under section 91 or 92B IAA 1999, the maximum amount of a fine that

could be imposed on the person on summary conviction for the offence; (b) in any other case, £15,000.

89. New section 92C(8) provides the Secretary of State with the power, by regulations, to amend the maximum amount in any other case (currently set at £15,000) in limb (b) above.

Justification for taking the power

90. The power allows the Secretary of State the ability to respond to the effectiveness of the (i) fixed penalty amount specified in a fixed penalty notice, and (ii) the maximum value of both a fixed and variable penalty notice imposed on persons in accordance with section 92C(7) as mentioned above.

91. For example, where a regulation has specified a fixed penalty amount, and where, following implementation of that regulation, that amount is deemed not to provide an effective deterrent from the committal of certain offences, the power provides for such amount to be revised accordingly to ensure that system abuses can be more effectively tackled.

Justification for the procedure

92. As this delegated power will amend primary legislation (in other words, it is a Henry VIII power), appropriate safeguards need to be implemented.

93. The affirmative procedure will provide for adequate scrutiny between both Houses to ensure that any exercise of these powers is proportionate.

94. The affirmative procedure provides the appropriate balance between the scrutiny requirements of Parliament and the business needs of Government. It will ensure the framework of fixed penalties is monitored but can also be updated when needed, providing clarity to the immigration advice sector.

Schedule 1, 12 – Fees

<i>Power conferred on:</i>	Secretary of State
<i>Power exercised by:</i>	Regulations made by statutory instrument
<i>Parliamentary Procedure:</i>	Negative Procedure as a result of section 166(6) of the Immigration and Asylum Act 1999 (“IAA 1999”)

Context and Purpose

95. Clause 12 to Schedule 1 inserts new subsection 93A into Part V of the IAA 1999 to provide that the Secretary of State has the power to, by order, specify fees that the ISC can charge to organisations for certain matters in connection with the exercise of the ISC’s regulatory functions.

96. Currently, under Schedule 6 paragraph 5(1) to the IAA 1999, the Secretary of State may by order specify fees for the registration and or continued registration of persons on the register. This fee is charged to the ISC-registered organisation.
97. The new power is a general power, which will provide that an order can specify *“fees to be charged by the Commissioner in respect of the exercise of the Commissioner’s functions”*. This broad power will allow the ISC to charge fees to the organisation for any matters that they designate in the context of the provision of immigration advice and services. For example, for the taking of examinations, and for providing training and accreditation services.
98. Subsection (2) will accompany the general power to provide a non-exhaustive list of matters which the ISC may charge for.
99. The fees charged via the power set out in the new clause will be subject to any waiver of such fees by the ISC in accordance with paragraph 5 Schedule 6 IAA 1999.

Justification for taking the power

100. The rationale for the power is to provide the ISC with a legal basis for setting out the regulatory matters they can charge for, where both the fee and the matters charged for can be amended in line with changes to the immigration advice sector.
101. Creating the fee power as set out above will enable the ISC to recover costs for services used and regulatory processes they carry out. This power will be used to ensure that all relevant regulatory work undertaken by the ISC is charged for and brings them in line with HM Treasury principles of managing public money, moving towards cost recovery for the cost of regulation and reducing any burden on the taxpayer.

Justification for the procedure

102. The negative procedure is considered to afford an appropriate level of parliamentary scrutiny. The Secretary of State, in creating a fee order, will be responding to the changing landscape of the immigration advice industry, where the ISC will have engaged with the sector on the appropriateness of matters they will charge for under a fee order.
103. The negative procedure allows the ISC and the Secretary of State the necessary flexibility to amend the list of chargeable matters within the evolving immigration advice landscape at pace, as well as giving Parliament, the general public and immigration advisers an appropriate period of notice before being subject to any effect.
104. Importantly, when specifying the amount of fee, the power will provide that the Secretary of State must have regard to (i) the costs of exercising the function in question, and (b) the costs of exercising any other function of the ISC. Therefore, any chargeable fee will be designated within the boundaries of what is reasonable and proportionate in line with HM Treasury rules on managing public money.

Schedule 1, 14(1), 14(2), 14(3), 14(4) – The complaints scheme

<i>Power conferred on:</i>	Secretary of State
<i>Power exercised by:</i>	Regulations made by statutory instrument
<i>Parliamentary Procedure:</i>	The affirmative procedure will apply to the regulations as a result of section 166(5) of the Immigration and Asylum Act 1999 (“IAA 1999”)

Context and Purpose

105. Clauses 14(1) to 14(4) to Schedule 1 amend paragraphs 5(3), 6 and 9(1) in Part I of Schedule 5 to the IAA 1999 to add the provision of immigration advice or immigration services by someone who is not registered with the IISC (and is not otherwise a “*qualified person*” under s.84(2) IAA 1999) to the list of complaints in paragraph 5(3) of Schedule 5 IAA 1999 under which a person can be investigated by the ISC.
106. Paragraph 9(1) of Schedule 5 IAA 1999 is amended to add that, on determining a complaint under the complaints scheme established in Schedule 5, the ISC may order that a person who provided immigration advice/services to which the complaint relates; (i) refund all or any part of the fees the person charged for the immigration advice/services and/or (ii) pay an amount specified as compensation in respect of any loss, inconvenience or distress suffered as a result of the provision of the advice or services.
107. Paragraph 9 of Schedule 5 IAA 1999 is further amended to add sub-paragraphs (1D) and (1E). Sub-paragraph (1D) provides that “*the total amount that may be ordered to be refunded or paid by virtue of sub-paragraph (1)(f) in respect of a complaint must not exceed £250,000*”.
108. Sub-paragraph (1E) grants a power to the Secretary of State to amend the monetary amount mentioned at sub-paragraph (1D) by regulations for the time to which a complaint relates.

Justification for taking the power

109. The new power provides the Secretary of State the ability to set, and amend in future, the maximum amount of refund and compensation that can be paid to someone who has been determined to have received improper immigration advice and/or immigration services following investigation by the ISC under the complaints scheme in Schedule 5 IAA 1999 for a single complaint.
110. The power to amend that amount by regulations provides the ISC with the flexibility to take effective action to disrupt poor and illegal practice by both regulated and unregulated immigration advisers.
111. Any organisation registered with the ISC is required to have an assured insurance coverage of £250,000. It is anticipated however, that the £250,000 maximum payment is unlikely to ever be required under a single complaint in practice. It is therefore unlikely that the cap would need to be revised by

regulations, and therefore this measure is deemed uncontroversial, save that the Secretary of State has the option to do so in unlikely circumstances.

112. It may also be that the ISC requires registered organisations to be insured to a higher amount, and therefore the ability to be able to adapt to this requirement and amend the cap by regulations will ensure that the compensation scheme remains in line with current regulatory practice.

Justification for the procedure

113. As this delegated power will amend primary legislation (in other words, it is a Henry VIII power), appropriate safeguards need to be implemented.

114. As noted above, it is unlikely that the ISC will ever need to impose a refund/compensation value which is greater than £250,000 (the limit for assured insurance value of the organisation). Therefore, it is anticipated that this power is unlikely to be used frequently. But nonetheless the affirmative procedure is anticipated to be appropriate in the circumstances by providing for the right level of parliamentary scrutiny. Any such regulations to amend the amount shall be in line with any increase to the required level of assured insurance coverage of an organisation. Any decision to alter that amount by the ISC would be subject to consultation with advisers.