

# **Nationality, Immigration and Asylum Bill**

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Home Office, are published separately as Bill 119-EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Mr Secretary Blunkett has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Nationality, Immigration and Asylum Bill are compatible with the Convention rights.



# Nationality, Immigration and Asylum Bill

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**B I L L**

TO

Make provision about nationality, immigration and asylum; to create offences in connection with international traffic in prostitution; to make provision about international projects connected with migration; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: –

**PART 1**

NATIONALITY

**1 Naturalisation: knowledge of language and society**

- (1) The following shall be inserted after the word “and” after paragraph 1(1)(c) of Schedule 1 to the British Nationality Act 1981 (c. 61) (requirements for naturalisation) – 5  
    “(ca) that he has sufficient knowledge about life in the United Kingdom; and”.
- (2) The following shall be inserted after section 41(1)(b) of that Act (regulations) – 10  
    “(ba) for determining whether a person has sufficient knowledge of a language for the purpose of an application for naturalisation;  
    (bb) for determining whether a person has sufficient knowledge about life in the United Kingdom for the purpose of an application for naturalisation;”.
- (3) The following shall be inserted after section 41(1) of that Act – 15  
    “(1A) Regulations under subsection (1)(ba) or (bb) may, in particular –  
        (a) make provision by reference to possession of a specified qualification;  
        (b) make provision by reference to possession of a qualification of a specified kind; 20

- 
- (c) make provision by reference to attendance on a specified course;
- (d) make provision by reference to attendance on a course of a specified kind;
- (e) make provision by reference to a specified level of achievement; 5
- (f) enable a person designated by the Secretary of State to determine sufficiency of knowledge in specified circumstances;
- (g) enable the Secretary of State to accept a qualification of a specified kind as evidence of sufficient knowledge of a language.” 10
- 2 Naturalisation: spouse of citizen**
- (1) Paragraphs 3 and 4 of Schedule 1 to the British Nationality Act 1981 (c. 61) (requirements for naturalisation as British citizen: spouse of citizen) shall be amended as follows –
- (a) in paragraph 3(e) for “requirement specified in paragraph 1(1)(b)” substitute “requirements specified in paragraph 1(1)(b), (c) and (ca)”, and 15
- (b) in paragraph 4(c) omit “and (e)”.
- (2) Paragraphs 7 and 8 of that Schedule (requirements for naturalisation as British overseas territories citizen: spouse of citizen) shall be amended as follows – 20
- (a) in paragraph 7(e) for “requirement specified in paragraph 5(1)(b)” substitute “requirements specified in paragraph 5(1)(b) and (c)”, and
- (b) in paragraph 8(c) omit “and (e)”.
- 3 Citizenship ceremony, oath and pledge**
- Schedule 1 (which makes provision about citizenship ceremonies, oaths and pledges) shall have effect. 25
- 4 Deprivation of citizenship**
- (1) The following shall be substituted for section 40 of the British Nationality Act 1981 (deprivation of citizenship) –
- “40 Deprivation of citizenship 30**
- (1) In this section a reference to a person’s “citizenship status” is a reference to his status as –
- (a) a British citizen,
- (b) a British overseas territories citizen,
- (c) a British Overseas citizen, 35
- (d) a British National (Overseas),
- (e) a British protected person, or
- (f) a British subject.
- (2) The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State thinks that the person has done anything seriously prejudicial to the vital interests of – 40
- (a) the United Kingdom, or

- (b) a British overseas territory.
- (3) The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State thinks that the registration or naturalisation was obtained by means of – 5
  - (a) fraud,
  - (b) false representation, or
  - (c) concealment of a material fact.
- (4) The Secretary of State may not make an order under subsection (2) if he thinks that the order would make a person stateless. 10
- (5) Before making an order under this section in respect of a person the Secretary of State must give the person written notice specifying – 15
  - (a) that the Secretary of State has decided to make an order,
  - (b) the reasons for the order, and
  - (c) the person’s right of appeal under section 40A(1) or under section 2(2A) of the Special Immigration Appeals Commission Act 1997 (c. 68).
- (6) Where a person acquired a citizenship status by the operation of a law which applied to him because of his registration or naturalisation under an enactment having effect before commencement, the Secretary of State may by order deprive the person of the citizenship status if the Secretary of State thinks that the registration or naturalisation was obtained by means of – 20
  - (a) fraud,
  - (b) false representation, or 25
  - (c) concealment of a material fact.

#### **40A Deprivation of citizenship: appeal**

- (1) A person who is given notice under section 40(5) of a decision to make an order in respect of him under section 40 may appeal against the decision to an adjudicator appointed under section 59 of the Nationality, Immigration and Asylum Act 2002 (immigration appeal). 30
- (2) Subsection (1) shall not apply to a decision if the Secretary of State certifies that it was taken wholly or partly in reliance on information which in his opinion should not be made public on grounds relating to – 35
  - (a) the interests of national security,
  - (b) the interests of the relationship between the United Kingdom and another country, or
  - (c) another matter of a political kind.
- (3) A party to an appeal to an adjudicator under subsection (1) may, with the permission of the Immigration Appeal Tribunal, appeal to the Tribunal against the adjudicator’s determination on a point of law. 40
- (4) A party to an appeal to the Immigration Appeal Tribunal under subsection (3) may bring a further appeal on a point of law – 45
  - (a) where the decision of the adjudicator was made in Scotland, to the Court of Session, or

- (b) in any other case, to the Court of Appeal.
- (5) An appeal under subsection (4) may be brought only with the permission of—
- (a) the Tribunal, or
  - (b) if the Tribunal refuses permission, the court referred to in subsection (4)(a) or (b). 5
- (6) An order under section 40 may not be made in respect of a person while an appeal under this section—
- (a) has been instituted and has not yet been finally determined, withdrawn or abandoned, or 10
  - (b) could be brought (ignoring any possibility of an appeal out of time with permission).
- (7) Rules under section 84 of the Nationality, Immigration and Asylum Act 2002 (immigration appeal: rules) may make provision about an appeal under this section. 15
- (8) Directions under section 85 of that Act (practice directions) may make provision about an appeal under this section.”
- (2) The following shall be inserted after section 2(2) of the Special Immigration Appeals Commission Act 1997 (c. 68)(jurisdiction) —
- “(2A) A person may appeal to the Special Immigration Appeals Commission against a decision to make an order under section 40 of the British Nationality Act 1981 (c. 61) (deprivation of citizenship) if he is not entitled to appeal under section 40A(1) of that Act because of a certificate under section 40A(2).” 20
- 5 Resumption of citizenship 25**
- In the following provisions of the British Nationality Act 1981 the words “, if a woman,” shall cease to have effect—
- (a) section 10(1) and (2) (registration as British citizen following renunciation of citizenship), and
  - (b) section 22(1) and (2) (registration as British overseas territories citizen following renunciation of citizenship). 30
- 6 Nationality decision: discrimination**
- (1) Section 19D of the Race Relations Act 1976 (c. 74)(discrimination by public authority: permitted cases) shall be amended as follows.
- (2) In subsection (1) for “immigration and nationality functions” substitute “immigration functions”. 35
- (3) For subsections (4) and (5) substitute—
- “(4) In subsection (1) “immigration functions” means functions exercisable by virtue of any of the enactments mentioned in subsection (5).
- (5) Those enactments are— 40
- (a) the Immigration Acts (within the meaning of section 123 of the Nationality, Immigration and Asylum Act 2002) excluding—
    - (i) Part 1 of that Act, and

- 
- (ii) sections 28A to 28K of the Immigration Act 1971 (c. 77) so far as they relate to offences under Part III of that Act;
- (b) the Special Immigration Appeals Commission Act 1997 (c. 68);
- (c) provision made under section 2(2) of the European Communities Act 1972 (c. 68) which relates to immigration or asylum; and
- (d) any provision of Community law which relates to immigration or asylum.” 5
- (4) Section 19E of the Race Relations Act 1976 (c. 74) (monitoring of use of section 19D) shall be amended as follows – 10
- (a) in subsection (3)(a) for “immigration and nationality functions” substitute “immigration functions”, and
- (b) omit subsection (7).
- (5) In section 71A of that Act (general statutory duty: special cases) – 15
- (a) in subsection (1) the words “(within the meaning of section 19D(1))” shall be omitted, and
- (b) the following shall be inserted after subsection (1) –
- “(1A) In subsection (1) “immigration and nationality functions” means functions exercisable by virtue of –
- (a) the Immigration Acts (within the meaning of section 123 of the Nationality, Immigration and Asylum Act 2002) excluding – 20
- (i) Part 1 of that Act, and
- (ii) sections 28A to 28K of the Immigration Act 1971 so far as they relate to offences under Part III of that Act; 25
- (b) the British Nationality Act 1981 (c. 61);
- (c) the British Nationality (Falkland Islands) Act 1983 (c. 6);
- (d) the British Nationality (Hong Kong) Act 1990 (c. 34);
- (e) the Hong Kong (War Wives and Widows) Act 1996 (c. 41); 30
- (f) the British Nationality (Hong Kong) Act 1997 (c. 20);
- (g) the Special Immigration Appeals Commission Act 1997;
- (h) provision made under section 2(2) of the European Communities Act 1972 which relates to the subject matter of an enactment within any of paragraphs (a) to (g); or 35
- (i) any provision of Community law which relates to the subject matter of an enactment within any of those paragraphs.” 40
- 7 Nationality decision: reasons and review**
- (1) Section 44(2) and (3) of the British Nationality Act 1981 (no requirement to give reasons for discretionary decision, and no right of appeal) shall cease to have effect.
- (2) Section 1(5) of the British Nationality (Hong Kong) Act 1990 (no requirement to give reasons for discretionary decision, and no right of appeal) shall cease to have effect. 45

**8 Citizenship: registration**

In paragraph 3(1)(b) of Schedule 2 to the British Nationality Act 1981 (c. 61) (application by person born in United Kingdom or overseas territory for registration as citizen: age requirement) the words “had attained the age of ten but” shall cease to have effect.

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**9 Legitimacy of child**

(1) The following shall be substituted for section 50(9) of the British Nationality Act 1981 (interpretation: child)–

“(9) For the purposes of this Act a child’s mother is the woman who gives birth to the child.

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(9A) For the purposes of this Act a child’s father is–

- (a) the husband, at the time of the child’s birth, of the woman who gives birth to the child, or
- (b) where a person is treated as the father of the child under section 28 of the Human Fertilisation and Embryology Act 1990 (c. 37) (father), that person, or
- (c) where neither paragraph (a) nor paragraph (b) applies, any person who satisfies prescribed requirements as to proof of paternity.

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(9B) In subsection (9A)(c) “prescribed” means prescribed by regulations of the Secretary of State; and the regulations–

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- (a) may confer a function (which may be a discretionary function) on the Secretary of State or another person,
- (b) may make provision which applies generally or only in specified circumstances,
- (c) may make different provision for different circumstances,
- (d) must be made by statutory instrument, and
- (e) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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(9C) The expressions “parent”, “child” and “descended” shall be construed in accordance with subsections (9) and (9A).”

30

(2) In section 3(6) of that Act (registration of minor as British citizen)–

- (a) after paragraph (a) insert “and”,
- (b) the word “and” after paragraph (b) shall cease to have effect, and
- (c) paragraph (c) (illegitimate child) shall cease to have effect.

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(3) In section 17(6) of that Act (registration of minor as British overseas territories citizen)–

- (a) after paragraph (a) insert “and”,
- (b) the word “and” after paragraph (b) shall cease to have effect, and
- (c) paragraph (c) (illegitimate child) shall cease to have effect.

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(4) Section 47 of that Act (legitimated children) shall cease to have effect.

(5) In Schedule 2 to that Act (persons otherwise stateless)–

- (a) in paragraph 1(1)(b) (person born in United Kingdom), the words “he is born legitimate and” shall cease to have effect, and

- (b) in paragraph 2(1)(b) (person born in British overseas territory), the words “he is born legitimate and” shall cease to have effect.

## 10 Right of abode: certificate of entitlement

- (1) The Secretary of State may by regulations make provision for the issue to a person of a certificate that he has the right of abode in the United Kingdom. 5
- (2) The regulations may, in particular –
- (a) specify to whom an application must be made;
  - (b) specify the place (which may be outside the United Kingdom) to which an application must be sent;
  - (c) provide that an application must be made in a specified form; 10
  - (d) provide that an application must be accompanied by specified documents;
  - (e) require the payment of a fee on the making of an application;
  - (f) provide for a certificate to cease to have effect after a period of time specified in or determined in accordance with the regulations; 15
  - (g) make provision about the revocation of a certificate.
- (3) The regulations may –
- (a) make provision which applies generally or only in specified cases or circumstances;
  - (b) make different provision for different purposes; 20
  - (c) include consequential, incidental or transitional provision.
- (4) The regulations –
- (a) must be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament. 25
- (5) The Immigration Act 1971 (c. 77) shall be amended as follows –
- (a) in section 3(9)(b) (proof of entitlement to right of abode) the words “issued by or on behalf of the Government of the United Kingdom certifying that he has such a right of abode” shall cease to have effect, and 30
  - (b) in section 33(1) for the definition of “certificate of entitlement” substitute –  
“certificate of entitlement” means a certificate under section 10 of the Nationality, Immigration and Asylum Act 2002 that a person has the right of abode in the United Kingdom;”. 35
- (6) Regulations under this section may, in particular, include provision saving, with or without modification, the effect of a certificate which –
- (a) is issued before the regulations come into force, and
  - (b) is a certificate of entitlement for the purposes of sections 3(9) and 33(1) of the Immigration Act 1971 as those sections have effect before the commencement of subsection (5) above. 40

## 11 Unlawful presence in United Kingdom

- (1) This section –

- 
- (a) applies for the construction of the expression “in the United Kingdom in breach of the immigration laws” in section 4 of and Schedule 1 to the British Nationality Act 1981 (c. 61) (registration and naturalisation), and
- (b) is without prejudice to the generality of that expression. 5
- (2) A person shall be treated as being in the United Kingdom in breach of the immigration laws at any time when he –
- (a) is in the United Kingdom,
- (b) does not have the right of abode in the United Kingdom within the meaning of section 2 of the Immigration Act 1971 (c. 77), 10
- (c) does not have leave to enter or remain in the United Kingdom,
- (d) is not a qualified person within the meaning of the Immigration (European Economic Area) Regulations 2000 (S.I. 2000/2326) (person entitled to reside in United Kingdom without leave to remain), and
- (e) is not a family member of a qualified person within the meaning of those regulations. 15
- (3) A person who remains in the United Kingdom after ceasing to be a qualified person within the meaning of those regulations shall be treated as being in the United Kingdom in breach of the immigration laws until he –
- (a) leaves the United Kingdom, or 20
- (b) obtains leave to remain in the United Kingdom.
- (4) A person who remains in the United Kingdom after ceasing to be a family member of a qualified person within the meaning of those regulations shall be treated as being in the United Kingdom in breach of the immigration laws until he – 25
- (a) leaves the United Kingdom, or
- (b) obtains leave to remain in the United Kingdom.
- (5) Section 11(1) of the Immigration Act 1971 (person deemed not to be in the United Kingdom before disembarkation, while in controlled area or while under immigration control) shall apply for the purposes of this section as it applies for the purposes of that Act. 30
- 12 Hong Kong**
- A person may not be registered as a British overseas territories citizen under a provision of the British Nationality Act 1981 by virtue of a connection with Hong Kong. 35
- 13 Repeal of spent provisions**
- Schedule 2 (which repeals spent provisions) shall have effect.



## PART 2

### ACCOMMODATION CENTRES

#### *Establishment*

#### **14 Establishment of centres**

- (1) The Secretary of State may arrange for the provision of premises for the accommodation of persons in accordance with this Part. 5
- (2) A set of premises provided under this section is referred to in this Act as an “accommodation centre”.

#### *Use of centres*

#### **15 Support for destitute asylum-seeker**

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- (1) The Secretary of State may arrange for the provision of accommodation for a person in an accommodation centre if –
  - (a) the person is an asylum-seeker or the dependant of an asylum-seeker, and
  - (b) the Secretary of State thinks that the person is destitute or is likely to become destitute within a prescribed period. 15
- (2) The Secretary of State may make regulations about procedure to be followed in respect of the provision of accommodation under this section.
- (3) The regulations may, in particular, make provision –
  - (a) specifying procedure to be followed in applying for accommodation in an accommodation centre; 20
  - (b) providing for an application to be combined with an application under or in respect of another enactment;
  - (c) requiring an applicant to provide information;
  - (d) specifying circumstances in which an application may not be considered; 25
  - (e) about the making of enquiries by the Secretary of State;
  - (f) requiring a person to notify the Secretary of State of a change in circumstances.
- (4) Sections 16 to 18 define the following expressions for the purpose of this Part – 30
  - (a) asylum-seeker,
  - (b) dependant, and
  - (c) destitute.

#### **16 Asylum-seeker: definition**

- (1) For the purposes of this Part a person is an “asylum-seeker” if – 35
  - (a) he is at least 18 years old,
  - (b) a claim for asylum has been made by him at a place designated by the Secretary of State,
  - (c) the Secretary of State has recorded the claim, and

- (d) the claim has not been determined.
- (2) A person shall continue to be treated as an asylum-seeker despite subsection (1)(d) while –
- (a) his household includes a dependant child who is under 18, and
  - (b) he does not have leave to enter or remain in the United Kingdom. 5
- (3) A claim for asylum is a claim by a person that to remove him from or require him to leave the United Kingdom would be contrary to the United Kingdom's obligations under –
- (a) the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol, or 10
  - (b) Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4th November 1950.

## 17 Destitution: definition

- (1) Where a person has dependants, he and his dependants are destitute for the purpose of this Part if they do not have and cannot obtain – 15
- (a) adequate accommodation, and
  - (b) food and other essential items.
- (2) Where a person does not have dependants, he is destitute for the purpose of this Part if he does not have and cannot obtain – 20
- (a) adequate accommodation, and
  - (b) food and other essential items.
- (3) In determining whether accommodation is adequate the Secretary of State must have regard to any matter prescribed for the purposes of this subsection.
- (4) In determining whether accommodation is adequate for the purposes of subsection (1) or (2) the Secretary of State may not have regard to – 25
- (a) whether a person has an enforceable right to occupy accommodation,
  - (b) whether a person shares all or part of accommodation,
  - (c) whether accommodation is temporary or permanent,
  - (d) the location of accommodation, or 30
  - (e) any other matter prescribed for the purposes of this subsection.
- (5) The Secretary of State may by regulations specify items which are or are not to be treated as essential items for the purposes of subsections (1) and (2).
- (6) The Secretary of State may by regulations –
- (a) provide that a person is not to be treated as destitute for the purposes of this Part in specified circumstances; 35
  - (b) enable or require the Secretary of State in deciding whether a person is destitute to have regard to income which he or a dependant of his might reasonably be expected to have;
  - (c) enable or require the Secretary of State in deciding whether a person is destitute to have regard to support or assets which are or might reasonably be expected to be available to the person or a dependant of his; 40
  - (d) make provision as to the valuation of assets.

## 18 **Dependant: definition**

For the purposes of this Part a person is a “dependant” of an asylum-seeker if (and only if) that person –

- (a) is in the United Kingdom, and
- (b) is within a prescribed class.

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## 19 **Sections 15 to 18: supplementary**

- (1) This section applies for the purposes of sections 15 to 18.
- (2) The Secretary of State may inquire into and decide a person’s age.
- (3) A claim for asylum shall be treated as determined at the end of such period as may be prescribed beginning with – 10
  - (a) the date on which the Secretary of State notifies the claimant of his decision on the claim, or
  - (b) if the claimant appeals against the Secretary of State’s decision, the date on which the appeal is disposed of.
- (4) A notice under subsection (3)(a) – 15
  - (a) must be in writing, and
  - (b) if sent by first class post to the claimant’s last known address or to the claimant’s representative, shall be treated as being received by the claimant on the second day after the date of posting.
- (5) An appeal is disposed of when it is no longer pending for the purpose of – 20
  - (a) Part 5 of this Act, or
  - (b) the Special Immigration Appeals Commission Act 1997 (c. 68).

## 20 **Immigration and Asylum Act 1999, s. 95**

The Secretary of State may provide support under section 95 of the Immigration and Asylum Act 1999 (c. 33) (destitute asylum-seeker) by arranging for the provision of accommodation in an accommodation centre. 25

## 21 **Person subject to United Kingdom entrance control**

- (1) Residence restrictions imposed under paragraph 21(2) of Schedule 2 to the Immigration Act 1971 (c. 77) (temporary admission to United Kingdom or release from detention) may include a requirement to reside at an accommodation centre. 30
- (2) Where a person is required to reside in an accommodation centre by virtue of subsection (1) the Secretary of State must arrange for the provision of accommodation for the person in an accommodation centre.
- (3) But if the person is required to leave an accommodation centre at which he is resident as the result of the breach (whether by him or by someone else) of a condition of residence, he shall be treated as having broken the residence restriction referred to in subsection (1). 35
- (4) The Secretary of State may provide support under section 4 of the Immigration and Asylum Act 1999 (persons subject to entrance control) (including that section as amended by section 37 of this Act) by arranging for the provision of accommodation in an accommodation centre. 40

**22 Provisional assistance**

If the Secretary of State thinks that a person may be eligible for the provision of accommodation in an accommodation centre under section 15, he may arrange for the provision for the person, pending a decision about eligibility, of –

- (a) accommodation in an accommodation centre, or 5
- (b) other support or assistance (of any kind).

*Operation of centres***23 Resident of centre**

A reference in this Part to a resident of an accommodation centre is a reference to a person for whom accommodation in the centre is provided – 10

- (a) under section 15,
- (b) by virtue of section 20,
- (c) by virtue of section 21, or
- (d) under section 22.

**24 Manager of centre** 15

A reference in this Part to the manager of an accommodation centre is a reference to a person who agrees with the Secretary of State to be wholly or partly responsible for the management of the centre.

**25 Facilities**

- (1) The Secretary of State may arrange for the following to be provided to a resident of an accommodation centre – 20

- (a) food and other essential items;
- (b) *money*;
- (c) *assistance with transport for the purpose of proceedings under the Immigration Acts*; 25
- (d) transport to and from the centre;
- (e) *assistance with expenses incurred in connection with carrying out voluntary work or other activities*;
- (f) education and training;
- (g) medical facilities; 30
- (h) facilities for religious observance;
- (i) anything which the Secretary of State thinks ought to be provided for a person because of his exceptional circumstances.

- (2) The Secretary of State may make regulations –

- (a) specifying the amount or maximum amount of money to be provided under subsection (1)(b), or 35
- (b) requiring the manager of an accommodation centre to determine the amount of money to be provided under subsection (1)(b) in accordance with the regulations.

- (3) The Secretary of State may by order amend subsection (1) so as to add a reference to facilities which may be provided. 40

## 26 Conditions of residence

- (1) The Secretary of State may make regulations about conditions to be observed by residents of an accommodation centre.
- (2) Regulations under subsection (1) may, in particular, enable a condition to be imposed in accordance with the regulations by – 5
  - (a) the Secretary of State, or
  - (b) the manager of an accommodation centre.
- (3) A condition imposed by virtue of this section may, in particular – 10
  - (a) require a person not to be absent from the centre during specified hours without the permission of the Secretary of State or the manager;
  - (b) require a person to report to an immigration officer or the Secretary of State.
- (4) If a resident of an accommodation centre breaches a condition imposed under this section, the Secretary of State may – 15
  - (a) require the resident and any dependant of his to leave the centre;
  - (b) authorise the manager of the centre to require the resident and any dependant of his to leave the centre.
- (5) If a dependant of a resident of an accommodation centre breaches a condition imposed under this section, the Secretary of State may – 20
  - (a) require the resident and any dependant of his to leave the centre;
  - (b) authorise the manager of the centre to require the resident and any dependant of his to leave the centre.
- (6) Regulations under this section must include provision for ensuring that a person subject to a condition is notified of the condition in writing.
- (7) A condition imposed by virtue of this section is in addition to any condition imposed under paragraph 21 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry to United Kingdom). 25
- (8) In determining whether or not to provide a person with support or assistance under section 15 or 22 of this Act or section 4 or 95 of the Immigration and Asylum Act 1999 (c. 33) (asylum-seeker) the Secretary of State may take into account the fact that the person or a dependant of his has breached a condition imposed by virtue of this section. 30
- (9) A reference in this Part to a condition of residence is a reference to a condition imposed by virtue of this section.

## 27 Financial contribution by resident

- (1) A condition imposed by virtue of section 26 may, in particular, require a resident of an accommodation centre to make payments to – 35
  - (a) the Secretary of State, or
  - (b) the manager of the centre.
- (2) The Secretary of State may make regulations enabling him to recover sums representing the whole or part of the value of accommodation and other facilities provided to a resident of an accommodation centre if – 40
  - (a) accommodation is provided for the resident in response to an application by him for support,

<ul style="list-style-type: none"> <li>(b) when the application was made the applicant had assets which were not capable of being realised, and</li> <li>(c) the assets have become realisable.</li> </ul> <p>(3) In subsection (3) “assets” includes assets outside the United Kingdom.</p> <p>(4) An amount recoverable by virtue of regulations made under subsection (2) may be recovered –</p> <ul style="list-style-type: none"> <li>(a) as a debt due to the Secretary of State;</li> <li>(b) by another prescribed method (which may include the imposition or variation of a residence condition).</li> </ul>	<p>5</p>
<b>28 Tenure</b>	<b>10</b>
<p>(1) A resident of an accommodation centre shall not be treated as acquiring a tenancy of or other interest in any part of the centre (whether by virtue of an agreement between the resident and another person or otherwise).</p> <p>(2) Subsection (3) applies where –</p> <ul style="list-style-type: none"> <li>(a) the Secretary of State decides to stop arranging for the provision of accommodation in an accommodation centre for a resident of the centre, or</li> <li>(b) a resident of an accommodation centre is required to leave the centre in accordance with section 26.</li> </ul> <p>(3) Where this subsection applies –</p> <ul style="list-style-type: none"> <li>(a) the Secretary of State or the manager of the centre may recover possession of the premises occupied by the resident, and</li> <li>(b) the right under paragraph (a) shall be enforceable in accordance with procedure prescribed by regulations made by the Secretary of State.</li> </ul> <p>(4) Any licence which a resident of an accommodation centre has to occupy premises in the centre shall be an excluded licence for the purposes of the Protection from Eviction Act 1977 (c. 43).</p> <p>(5) The following shall be inserted after section 3A(7A) of the Protection from Eviction Act 1977 (disapplication of section 3: Part VI of Immigration and Asylum Act 1999 (c. 33)) –</p> <p>“(7B) Section 28 of the Nationality, Immigration and Asylum Act 2002 (accommodation centre: tenure) provides for a resident’s licence to occupy an accommodation centre to be an excluded licence.”</p>	<p>15</p> <p>20</p> <p>25</p> <p>30</p>
<i>General</i>	
<b>29 Ancillary provisions</b>	<b>35</b>
<p>(1) The following provisions of the Immigration and Asylum Act 1999 shall apply for the purposes of this Part as they apply for the purposes of Part VI of that Act (support for asylum-seeker) –</p> <ul style="list-style-type: none"> <li>(a) section 105 (false representation),</li> <li>(b) section 106 (dishonest representation),</li> <li>(c) section 107 (delay or obstruction),</li> <li>(d) section 109 (offence committed by body),</li> <li>(e) section 112 (recovery of expenditure),</li> </ul>	<p>40</p>

- (f) section 124 (corporation sole), and
  - (g) section 127 (redirection of post).
- (2) In the application of section 112 a reference to something done under section 95 or 98 of that Act shall be treated as a reference to something done under section 15 or 22 of this Act. 5

### 30 Education: general

- (1) For the purposes of section 13 of the Education Act 1996 (c. 56) (general responsibility of local education authority) a resident of an accommodation centre shall not be treated as part of the population of a local education authority's area. 10
- (2) A local education authority shall not have regard to the needs of any resident of an accommodation centre in exercising their function under –
- (a) section 14 of the Education Act 1996 (sufficient primary and secondary schools), or
  - (b) section 118 of the School Standards and Framework Act 1998 (c. 31) (sufficient nursery education). 15
- (3) A child who is a resident of an accommodation centre may not be admitted to a maintained school or a maintained nursery unless the school or nursery is named in a statement in respect of the child under section 324 of the Education Act 1996 (special educational needs). 20
- (4) In subsection (3) –
- (a) “maintained school” means a maintained school within the meaning of section 20(7) of the School Standards and Framework Act 1998 (definition), and
  - (b) “maintained nursery” means a facility for nursery education, within the meaning of section 117 of that Act, provided by a local education authority. 25
- (5) The following shall not apply in relation to a child who is a resident of an accommodation centre –
- (a) section 86(1) and (2) of the School Standards and Framework Act 1998 (parental preference), 30
  - (b) section 19 of the Education Act 1996 (education out of school), and
  - (c) paragraphs 3 and 8 of Schedule 27 to that Act (special education needs: making of statement: parental preference).
- (6) A person exercising a function under this Act or the Education Act 1996 shall secure that a child who is a resident of an accommodation centre and who has special educational needs shall be educated by way of facilities provided under section 25(1)(g) of this Act unless that is incompatible with –
- (a) his receiving the special educational provision which his learning difficulty calls for, or 40
  - (b) the efficient use of resources.
- (7) An accommodation centre is not a school within the meaning of section 4 of the Education Act 1996 (definition); but –
- (a) the School Inspections Act 1996 (c. 57) shall apply to educational facilities provided at an accommodation centre as if the centre were a school, and 45

- (b) section 140 of the Learning and Skills Act 2000 (c. 21) (learning difficulties: assessment of post-16 needs) shall have effect as if an accommodation centre were a school.
- (8) An expression used in this section and in the Education Act 1996 (c. 56) shall have the same meaning in this section as in that Act. 5
- 31 Education: special cases**
- (1) This section applies to a child if a person who provides education to residents of an accommodation centre recommends in writing to the local education authority for the area in which the centre is that this section should apply to the child. 10
- (2) A local education authority may –
- (a) provide education for a child to which this section applies;
  - (b) disapply a provision of section 30 in respect of a child to which this section applies.
- (3) In determining whether to exercise a power under subsection (2) in respect of a child a local education authority shall have regard to any relevant guidance issued by the Secretary of State. 15
- (4) The governing body of a maintained school shall comply with a requirement of the local education authority for the school to admit to the school a child to which this section applies. 20
- (5) Subsection (4) shall not apply where compliance with a requirement would –
- (a) prejudice measures taken for the purpose of complying with a duty arising under section 1(6) of the School Standards and Framework Act 1998 (c. 31) (limit on infant class size), or
  - (b) otherwise prejudice the provision of efficient education or the efficient use of resources. 25
- (6) A local education authority may not impose a requirement under subsection (4) in respect of a school unless the authority has consulted the school in accordance with regulations made by the Secretary of State.
- (7) In this section – 30
- (a) “maintained school” means a maintained school within the meaning of section 20(7) of the School Standards and Framework Act 1998 (definition), and
  - (b) an expression which is also used in the Education Act 1996 shall have the same meaning as it has in that Act. 35
- 32 “Prescribed”: orders and regulations**
- (1) In this Part “prescribed” means prescribed by the Secretary of State by order or regulations.
- (2) An order or regulations under this Part may – 40
- (a) make provision which applies generally or only in specified cases or circumstances (which may be determined wholly or partly by reference to location);
  - (b) make different provision for different cases or circumstances.



- (3) An order or regulations under this Part must be made by statutory instrument.
- (4) An order or regulations under any of the following provisions of this Part shall be subject to annulment in pursuance of a resolution of either House of Parliament—
  - (a) section 15, 5
  - (b) section 17,
  - (c) section 18,
  - (d) section 19,
  - (e) section 25,
  - (f) section 27, 10
  - (g) section 28,
  - (h) section 31, and
  - (i) section 33.
- (5) Regulations under section 26 may not be made unless a draft has been laid before and approved by resolution of each House of Parliament. 15

### 33 Scotland

- (1) The Secretary of State may not make arrangements under section 14 for the provision of premises in Scotland unless he has consulted the Scottish Ministers.
- (2) The Secretary of State may by order make provision in relation to the education of residents of accommodation centres in Scotland. 20
- (3) An order under subsection (2) may, in particular —
  - (a) apply, disapply or modify the effect of an enactment (which may include a provision made by or under an Act of the Scottish Parliament); 25
  - (b) make provision having an effect similar to the effect of a provision of section 30 or 31;
  - (c) make provision which applies generally or only in a specified case or in specified circumstances;
  - (d) make different provision for different circumstances. 30

## PART 3

### OTHER SUPPORT AND ASSISTANCE

### 34 Asylum-seeker: form of support

- (1) The Secretary of State may make an order restricting the application of section 96(1)(b) of the Immigration and Asylum Act 1999 (c. 33) (support for asylum-seeker: essential living needs) — 35
  - (a) in all circumstances, to cases in which support is being provided under section 96(1)(a) (accommodation), or
  - (b) in specified circumstances only, to cases in which support is being provided under section 96(1)(a). 40
- (2) An order under subsection (1)(b) may, in particular, make provision by reference to —
  - (a) location;

- 
- (b) the date of an application.
- (3) An order under subsection (1) may include transitional provision.
- (4) An order under subsection (1) –
- (a) must be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament. 5
- 35 Destitute asylum-seeker**
- (1) Section 94 of the Immigration and Asylum Act 1999 (c. 33) (support for destitute asylum-seeker) shall be amended as follows.
- (2) In subsection (1) for the definition of “dependant” substitute – 10
- ““dependant” in relation to an asylum-seeker or a supported person means a person who –
- (a) is in the United Kingdom, and
  - (b) is within a prescribed class;”.
- (3) For subsection (3) substitute – 15
- “(3) A claim for asylum shall be treated as determined for the purposes of subsection (1) at the end of such period as may be prescribed beginning with –
- (a) the date on which the Secretary of State notifies the claimant of his decision on the claim, or 20
  - (b) if the claimant appeals against the Secretary of State’s decision, the date on which the appeal is finally determined.
- (3A) A person shall continue to be treated as an asylum-seeker following the determination of his claim for asylum while his household includes a dependant child who is under 18.” 25
- (4) Omit subsection (5).
- (5) The following shall be substituted for section 95(3) to (8) of the Immigration and Asylum Act 1999 (support for destitute asylum-seeker: interpretation) –
- “(3) Where a person has dependants, he and his dependants are destitute for the purpose of this section if they do not have and cannot obtain – 30
- (a) adequate accommodation, and
  - (b) food and other essential items.
- (4) Where a person does not have dependants, he is destitute for the purpose of this section if he does not have and cannot obtain – 35
- (a) adequate accommodation, and
  - (b) food and other essential items.
- (5) In determining whether accommodation is adequate for the purposes of subsection (3) or (4) the Secretary of State must have regard to any matter prescribed for the purposes of this subsection.
- (6) In determining whether accommodation is adequate for the purposes of subsection (3) or (4) the Secretary of State may not have regard to – 40

- (a) whether a person has an enforceable right to occupy accommodation,
  - (b) whether a person shares all or part of accommodation,
  - (c) whether accommodation is temporary or permanent,
  - (d) the location of accommodation, or
  - (e) any other matter prescribed for the purposes of this subsection.
- (7) The Secretary of State may by regulations specify items which are or are not to be treated as essential items for the purposes of subsections (3) and (4). 5
- (8) The Secretary of State may by regulations – 10
- (a) provide that a person is not to be treated as destitute for the purposes of this Part in specified circumstances;
  - (b) enable or require the Secretary of State in deciding whether a person is destitute to have regard to income which he or a dependant of his might reasonably be expected to have; 15
  - (c) enable or require the Secretary of State in deciding whether a person is destitute to have regard to support or assets which are or might reasonably be expected to be available to the person or a dependant of his;
  - (d) make provision as to the valuation of assets.” 20
- (6) Paragraph 2 of Schedule 8 to the Immigration and Asylum Act 1999 (c. 33) (support: regulations: destitution) shall cease to have effect.
- (7) The following shall be substituted for section 21(1B) of the National Assistance Act 1948 (c. 29) (duty of local authority to provide accommodation: exclusion of destitute asylum-seeker: interpretation) – 25
- “(1B) Section 95(3) to (8) of that Act shall apply for the purposes of subsection (1A) above; and for that purpose a reference to the Secretary of State in section 95(5) or (6) shall be treated as a reference to a local authority.”
- (8) The following shall be substituted for section 45(4B) of the Health Services and Public Health Act 1968 (c. 46) (local authority promotion of welfare of elderly: exclusion of destitute asylum-seeker: interpretation) – 30
- “(4B) Section 95(3) to (8) of that Act shall apply for the purposes of subsection (4A) above; and for that purpose a reference to the Secretary of State in section 95(5) or (6) shall be treated as a reference to a local authority.”
- (9) The following shall be substituted for paragraph 2(2B) of Schedule 8 to the National Health Service Act 1977 (c. 49) (local authority arrangements for prevention and care: exclusion of asylum-seeker: interpretation) – 35
- “(2B) Section 95(3) to (8) of that Act shall apply for the purposes of subparagraph (2A) above; and for that purpose a reference to the Secretary of State in section 95(5) or (6) shall be treated as a reference to a local social services authority.” 40

### 36 Young asylum-seeker

*The following provisions of the Immigration and Asylum Act 1999 shall have effect as if the definition of asylum-seeker in section 94(1) of that Act did not exclude persons who are under 18 –*

- (a) section 110 (local authority expenditure on asylum-seekers), and

(b) *section 111 (grants to voluntary organisations).*

### 37 Failed asylum-seeker

- (1) The following shall be added at the end of section 4 of the Immigration and Asylum Act 1999 (c. 33) (accommodation for person on temporary admission or release) – 5
- “(2) The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of a person if –
- (a) he was (but is no longer) an asylum-seeker, and
- (b) his claim for asylum was rejected.
- (3) The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of a dependant of a person for whom facilities may be provided under subsection (2). 10
- (4) The following expressions have the same meaning in this section as in Part VI of this Act (as defined in section 94) –
- (a) asylum-seeker, 15
- (b) claim for asylum, and
- (c) dependant.”
- (2) The present section 4 of the Immigration and Asylum Act 1999 becomes subsection (1) (and its heading becomes “Accommodation”).

### 38 Conditions of support 20

- (1) The following shall be inserted after section 95(9) of the Immigration and Asylum Act 1999 (support for asylum-seeker: condition) –
- “(9A) A condition imposed under subsection (9) may, in particular, relate to –
- (a) any matter relating to the use of the support provided, or 25
- (b) compliance with a restriction imposed under paragraph 21 of Schedule 2 to the 1971 Act (temporary admission or release from detention) or paragraph 5 of Schedule 3 to that Act (restriction pending deportation).”
- (2) The following shall be inserted after paragraph 6 of Schedule 9 to that Act (asylum-seeker: interim support) – 30
- “6A. The regulations may, in particular, require support to be provided subject to a condition of compliance with any restriction imposed under paragraph 21 of Schedule 2 to the 1971 Act (temporary admission or release from detention) or paragraph 5 of Schedule 3 to that Act (restriction pending deportation).” 35

### 39 Choice of form of support

- (1) The Secretary of State may refuse to provide support for a person under a provision specified in subsection (2) on the grounds that an offer has been made to the person of support under another provision specified in that subsection. 40
- (2) The provisions are –

- 
- (a) sections 15 and 22 of this Act,
- (b) section 4 of the Immigration and Asylum Act 1999 (c. 33) (accommodation for person temporarily admitted or released from detention), and
- (c) section 95 of that Act (support for destitute asylum-seeker). 5
- (3) In deciding under which of the provisions listed in subsection (2) to offer support to a person the Secretary of State may –
- (a) have regard to administrative or other matters which do not concern the person’s personal circumstances;
- (b) regard one of those matters as conclusive; 10
- (c) apply different criteria to different persons for administrative reasons (which may include the importance of testing the operation of a particular provision).
- 40 Back-dating of benefit for refugee**
- In section 123(7) of the Immigration and Asylum Act 1999 (back-dating of benefit for refugee: deduction for support received) after “under this Part” there shall be inserted “or Part 2 of the Nationality, Immigration and Asylum Act 2002 (accommodation centres)”. 15
- 41 Asylum-seeker: appeal against refusal to support**
- The following shall be substituted for section 103 of the Immigration and Asylum Act 1999 (asylum support appeal) – 20
- “103 Appeals: general**
- (1) This section applies where a person has applied for support under –
- (a) section 95,
- (b) section 15 of the Nationality, Immigration and Asylum Act 2002, or 25
- (c) both.
- (2) The person may appeal to an adjudicator against a decision that the person is not qualified to receive the support for which he has applied.
- (3) The person may also appeal to an adjudicator against a decision to stop providing support under a provision mentioned in subsection (1). 30
- (4) But subsection (3) does not apply –
- (a) to a decision to stop providing support under one of the provisions mentioned in subsection (1) if it is to be replaced immediately by support under the other provision, or 35
- (b) to a decision taken on the ground that the person is no longer an asylum-seeker or the dependant of an asylum-seeker.
- (5) On an appeal under this section an adjudicator may –
- (a) require the Secretary of State to reconsider a matter;
- (b) substitute his decision for the decision against which the appeal is brought; 40
- (c) dismiss the appeal.

- (6) An adjudicator must give his reasons in writing.
- (7) If an appeal under this section is dismissed the Secretary of State shall not consider any further application by the appellant for support under a provision mentioned in subsection (1)(a) or (b) unless the Secretary of State thinks there has been a material change in circumstances. 5

### 103A Appeals: location of support under section 95

- (1) The Secretary of State may by regulations provide for a decision as to where support provided under section 95 is to be provided to be appealable to an adjudicator under this Part.
- (2) Regulations under this section may provide for a provision of section 103 to have effect in relation to an appeal under the regulations with specified modifications. 10

### 103B Appeals: travelling expenses

*The Secretary of State may pay reasonable travelling expenses incurred by an appellant in connection with attendance for the purposes of an appeal under or by virtue of section 103 or 103A.” 15*

## 42 Voluntary departure from United Kingdom

- (1) A person is a “voluntary leaver” for the purposes of this section if –
- he is not a British citizen or an EEA national,
  - he leaves the United Kingdom for a place where he hopes to take up permanent residence (his “new place of residence”), and
  - the Secretary of State thinks that it is in the person’s interest to leave the United Kingdom and that the person wishes to leave. 20
- (2) The Secretary of State may make arrangements to –
- assist voluntary leavers;
  - assist individuals to decide whether to become voluntary leavers. 25
- (3) *The Secretary of State may, in particular, make payments (whether to voluntary leavers or to organisations providing services for them) which relate to –*
- travelling and other expenses incurred by or on behalf of a voluntary leaver, or a member of his family or household, in leaving the United Kingdom;*
  - expenses incurred by or on behalf of a voluntary leaver, or a member of his family or household, on or shortly after arrival in his new place of residence;*
  - the provision of services designed to assist a voluntary leaver, or a member of his family or household, to settle in his new place of residence;*
  - expenses in connection with a journey undertaken by a person (with or without his family or household) to prepare for, or to assess the possibility of, his becoming a voluntary leaver. 30*
- (4) In subsection (1)(a) “EEA national” means a national of a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time). 40
- (5) Section 29 of the Immigration Act 1971 (c. 77) (contributions to expenses of persons returning abroad) shall cease to have effect.

#### 43 International projects

- (1) The Secretary of State may participate in a project which is designed to –
- (a) reduce migration,
  - (b) assist or ensure the return of migrants,
  - (c) facilitate co-operation between States in matters relating to migration, 5
  - (d) conduct or consider research about migration, or
  - (e) arrange or assist the settlement of migrants (whether in the United Kingdom or elsewhere).
- (2) *In particular, the Secretary of State may –*
- (a) *provide financial support to an international organisation which arranges or participates in a project of a kind described in subsection (1);* 10
  - (b) *provide financial support to an organisation in the United Kingdom or another country which arranges or participates in a project of that kind;*
  - (c) *provide or arrange for the provision of financial or other assistance to a migrant who participates in a project of that kind;* 15
  - (d) *participate in financial or other arrangements which are agreed between Her Majesty’s Government and the government of one or more other countries and which are or form part of a project of that kind.*
- (3) In this section –
- (a) “migrant” means a person who leaves the country where he lives hoping to settle in another country (whether or not he is a refugee within the meaning of any international Convention), and 20
  - (b) “migration” shall be construed accordingly.
- (4) Subsection (1) does not –
- (a) confer a power to remove a person from the United Kingdom, or 25
  - (b) affect a person’s right to enter or remain in the United Kingdom.

#### 44 Repeal of spent provisions

The following provisions of the Immigration and Asylum Act 1999 (c. 33) shall cease to have effect –

- (a) section 96(4) to (6) (which relate to a provision about support for asylum-seekers which has been repealed by order), and 30
- (b) section 166(4)(e) (order under section 96(5): procedure).

### PART 4

#### DETENTION AND REMOVAL

##### *Detention* 35

#### 45 Detention by Secretary of State

- (1) A person may be detained under the authority of the Secretary of State pending –
- (a) a decision by the Secretary of State whether to give directions in respect of the person under paragraph 10 or 14 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: removal), or 40

- (b) removal of the person from the United Kingdom in pursuance of directions given by the Secretary of State under that paragraph.
- (2) Where the Secretary of State is empowered under section 3A of that Act (powers of Secretary of State) to examine a person or to give or refuse a person leave to enter the United Kingdom, the person may be detained under the authority of the Secretary of State pending – 5
- (a) the person’s examination by the Secretary of State,
- (b) the Secretary of State’s decision to give or refuse the person leave to enter,
- (c) a decision by the Secretary of State whether to give directions in respect of the person under paragraph 8 or 9 of Schedule 2 to that Act (removal), or 10
- (d) removal of the person in pursuance of directions given by the Secretary of State under that paragraph.
- (3) The following paragraphs of Schedule 2 to that Act shall have effect as if a reference to paragraph 16 of that Schedule included a reference to this section – 15
- (a) paragraph 17 (arrest without warrant by constable or immigration officer),
- (b) paragraph 18 (place and manner of detention), and 20
- (c) paragraphs 19 and 20 (cost of detention).
- (4) In respect of a person who is detained or liable to detention by virtue of this section, paragraph 21 of Schedule 2 to that Act (temporary admission, and release from detention) shall apply as if – 25
- (a) a reference to paragraph 16 of that Schedule were a reference to this section, and
- (b) a reference to an immigration officer included a reference to the Secretary of State.
- (5) In the case of a restriction imposed under paragraph 21 of that Schedule by virtue of this section – 30
- (a) a restriction imposed by an immigration officer may be varied by the Secretary of State, and
- (b) a restriction imposed by the Secretary of State may be varied by an immigration officer.
- (6) In subsection (1) the reference to paragraph 10 of that Schedule includes a reference to that paragraph as applied by virtue of section 10 of the Immigration and Asylum Act 1999 (c. 33) (persons unlawfully in United Kingdom: removal). 35
- (7) Subsection (6) is without prejudice to the generality of section 124.
- (8) A power under this section which is exercisable pending a decision of a particular kind by the Secretary of State is exercisable where the Secretary of State has reasonable grounds to suspect that he may make a decision of that kind. 40
- (9) In section 24(1)(e) of the Immigration Act 1971 (c. 77) (offence: failure to comply with restriction) for “or to an immigration officer” there shall be substituted “, to an immigration officer or to the Secretary of State”. 45



#### 46 Escorts

The following shall be added after paragraph 17(2) of Schedule 2 to the Immigration Act 1971 (c. 77) (detention for examination or removal: right to enter premises) –

- “(3) Sub-paragraph (4) applies where an immigration officer or constable – 5
  - (a) enters premises in reliance on a warrant under sub-paragraph (2), and
  - (b) arrests a person on the premises.
- (4) A detainee custody officer may enter the premises, if need be by force, for the purpose of carrying out a search. 10
- (5) In sub-paragraph (4) –
  - “detainee custody officer” means a person in respect of whom a certificate of authorisation is in force under section 154 of the Immigration and Asylum Act 1999 (c. 33) (detained persons: escort and custody), and 15
  - “search” means a search under paragraph 2(1)(a) of Schedule 13 to that Act (escort arrangements: power to search detained person).”

#### 47 Detention centres: change of name

- (1) In section 147 of the Immigration and Asylum Act 1999 (Part VIII: interpretation) – 20
  - (a) the definition of “detention centre” shall cease to have effect, and
  - (b) the following shall be inserted after the definition of “prisoner custody officer” –
    - “removal centre” means a place which is used solely for the detention of detained persons but which is not a short-term holding facility, a prison or part of a prison;” 25
- (2) In the provisions listed in subsection (3) (and any relevant headings) –
  - (a) for the words “detention centre” there shall be substituted the words “removal centre”, and 30
  - (b) for the words “detention centres” there shall be substituted the words “removal centres”.
- (3) The provisions are –
  - (a) in section 147 of the Immigration and Asylum Act 1999 (Part VIII: interpretation), the definitions of “contracted out detention centre”, “contractor”, “custodial functions”, “detention centre contract”, “detention centre rules”, and “directly managed detention centre”, 35
  - (b) section 148 of that Act (management of centre),
  - (c) sections 149 and 150 of that Act (contracting out),
  - (d) section 151 of that Act (intervention by Secretary of State), 40
  - (e) section 152 of that Act (visiting committee),
  - (f) section 153 of that Act (rules),
  - (g) section 155 of that Act (custodial functions),
  - (h) section 157 of that Act (short-term holding facility),
  - (i) section 158 of that Act (disclosure of information), 45
  - (j) section 159 of that Act (power of constable),

- (k) Schedule 11 to that Act (detainee custody officer),
  - (l) Schedule 12 to that Act (procedure at detention centre),
  - (m) Schedule 13 to that Act (escort),
  - (n) section 5A(5A) of the Prison Act 1952 (c. 52) (Chief Inspector of Prisons), and 5
  - (o) paragraph 13 of Schedule 4A to the Water Industry Act 1991 (c. 56) (disconnection).
- (4) A reference in an enactment or instrument to a detention centre within the meaning of Part VIII of Immigration and Asylum Act 1999 (c. 33) shall be construed as a reference to a removal centre within the meaning of that Part. 10

*Temporary release*

**48 Bail**

- (1) This section applies in a case where an immigration officer not below the rank of chief immigration officer has sole or shared power to release a person on bail in accordance with— 15
- (a) a provision of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry) (including a provision of that Schedule applied by a provision of that Act or by another enactment), or
  - (b) section 9A of the Asylum and Immigration Appeals Act 1993 (c. 23) (pending appeal from Immigration Appeal Tribunal). 20
- (2) In respect of an application for release on bail which is instituted after the expiry of the period of eight days beginning with the day on which detention commences, the power to release on bail—
- (a) shall be exercisable by the Secretary of State (as well as by any person with whom the immigration officer's power is shared under the provision referred to in subsection (1)), and 25
  - (b) shall not be exercisable by an immigration officer (except where he acts on behalf of the Secretary of State).
- (3) In relation to the exercise by the Secretary of State of a power to release a person on bail by virtue of subsection (2), a reference to an immigration officer shall be construed as a reference to the Secretary of State. 30
- (4) The Secretary of State may by order amend or replace subsection (2) so as to make different provision for the circumstances in which the power to release on bail may be exercised by the Secretary of State and not by an immigration officer. 35
- (5) An order under subsection (4)—
- (a) may include consequential or transitional provision,
  - (b) must be made by statutory instrument, and
  - (c) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament. 40
- (6) The following provisions of Part III of the Immigration and Asylum Act 1999 (Bail) shall cease to have effect—
- (a) sections 44 to 52 (routine bail hearings),
  - (b) section 53(5) (bail under regulations to match bail under Part III), and
  - (c) section 55 (grants to advisory organisations). 45

#### 49 Reporting restriction: travel expenses

- (1) *The Secretary of State may make a payment to a person in respect of travelling expenses which the person has incurred or will incur for the purpose of complying with a reporting restriction.*
- (2) In subsection (1) “reporting restriction” means a restriction which—
  - (a) requires a person to report to the police, an immigration officer or the Secretary of State, and
  - (b) is imposed under a provision listed in subsection (3).
- (3) Those provisions are—
  - (a) paragraph 21 of Schedule 2 to the Immigration Act 1971 (c. 77) (temporary admission or release from detention),
  - (b) paragraph 29 of that Schedule (bail), and
  - (c) paragraph 5 of Schedule 3 to that Act (pending deportation).

#### 50 Induction

- (1) A residence restriction may be imposed on an asylum-seeker or a dependant of an asylum-seeker without regard to his personal circumstances if—
  - (a) it requires him to reside at a specified location for a period not exceeding 14 days, and
  - (b) the person imposing the residence restriction believes that a programme of induction will be made available to the asylum-seeker at or near the specified location.
- (2) In subsection (1) “residence restriction” means a restriction imposed under—
  - (a) paragraph 21 of Schedule 2 to the Immigration Act 1971 (temporary admission or release from detention), or
  - (b) paragraph 2(5) of Schedule 3 to that Act (control pending deportation).
- (3) In this section—
  - “asylum-seeker” has the meaning given by section 16 of this Act but disregarding section 16(1)(a),
  - “dependant” has such meaning as may be prescribed by regulations made by the Secretary of State, and
  - “programme of induction” means education about the nature of the asylum process.
- (4) Regulations under subsection (3)—
  - (a) may make different provision for different circumstances,
  - (b) must be made by statutory instrument, and
  - (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### 51 Asylum-seeker: residence, &c. restriction

- (1) This section applies to—
  - (a) a person who makes a claim for asylum at a time when he has leave to enter or remain in the United Kingdom, and
  - (b) a dependant of a person within paragraph (a).

- (2) The Secretary of State or an immigration officer may impose on a person to whom this section applies any restriction which may be imposed under paragraph 21 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: residence, reporting and occupation restrictions) on a person liable to detention under paragraph 16 of that Schedule. 5
- (3) Where a restriction is imposed on a person under subsection (2) –
- (a) the restriction shall be treated for all purposes as a restriction imposed under paragraph 21 of that Schedule, and
  - (b) if the person fails to comply with the restriction he shall be liable to detention under paragraph 16 of that Schedule. 10
- (4) A restriction imposed on a person under this section shall cease to have effect if he ceases to be an asylum-seeker or the dependant of an asylum-seeker.
- (5) In this section –
- “asylum-seeker” has the same meaning as in section 50,
  - “claim for asylum” has the same meaning as in that section, and 15
  - “dependant” has such meaning as may be prescribed by regulations made by the Secretary of State.
- (6) Regulations under subsection (5) –
- (a) may make different provision for different circumstances,
  - (b) must be made by statutory instrument, and 20
  - (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### *Removal*

## 52 Family

- (1) The following shall be inserted after paragraph 10 of Schedule 2 to the Immigration Act 1971 (control of entry: removal) – 25
- “10A. Where directions are given in respect of a person under any of paragraphs 8 to 10 above, directions to the same effect may be given under that paragraph in respect of a member of the person’s family.”
- (2) Section 10 of the Immigration and Asylum Act 1999 (c. 33) (removal of person unlawfully in United Kingdom) shall be amended as follows. 30
- (3) In subsection (1)(c) omit –
- (a) “(the first directions)”, and
  - (b) “(“the other person”)”.
- (4) The following shall be substituted for subsections (3) to (5) (removal of family) – 35
- “(3) Directions for the removal of a person may not be given under subsection (1)(c) unless the Secretary of State has given the person written notice of the intention to remove him.
- (4) A notice under subsection (3) may not be given if – 40
- (a) the person whose removal under subsection (1)(a) or (b) is the cause of the proposed directions under subsection (1)(c) has left the United Kingdom, and

- (b) more than eight weeks have elapsed since that person's departure.
- (5) If a notice under subsection (3) is sent by first class post to a person's last known address, that subsection shall be taken to be satisfied at the end of the second day after the day of posting. 5
- (5A) Directions for the removal of a person under subsection (1)(c) cease to have effect if he ceases to belong to the family of the person whose removal under subsection (1)(a) or (b) is the cause of the directions under subsection (1)(c)."
- 53 Deception** 10
- In section 10(1) of the Immigration and Asylum Act 1999 (c. 33) (removal) the following shall be substituted for paragraph (b) –
- “(b) he uses deception in seeking (whether successfully or not) leave to remain;”.
- 54 Exemption from deportation** 15
- (1) Section 7 of the Immigration Act 1971 (c. 77) (existing residents exempt from deportation) shall be amended as follows.
- (2) Subsection (1)(a) (which is redundant) shall cease to have effect.
- (3) The following shall be substituted for subsection (1)(b) –
- “(b) shall not be liable to deportation under section 3(5) if at the time of the Secretary of State's decision he had for the last five years been ordinarily resident in the United Kingdom and Islands;”.
- (4) The following shall be added at the end of section 10 of the Immigration and Asylum Act 1999 (removal) –
- “(10) A person shall not be liable to removal from the United Kingdom under this section at a time when section 7(1)(b) of the Immigration Act 1971 (Commonwealth and Irish citizens ordinarily resident in United Kingdom) would prevent a decision to deport him.” 20
- (5) The reference in section 33(2) of the Immigration Act 1971 (which defines ordinary residence for the purposes of section 7 of that Act) to being in the United Kingdom in breach of the immigration laws shall be construed in accordance with section 11 of this Act. 30
- 55 Revocation of leave to enter or remain**
- (1) The Secretary of State may revoke a person's indefinite leave to enter or remain in the United Kingdom if – 35
- (a) the person is liable to deportation, but
- (b) the Secretary of State thinks that the person cannot be deported for legal reasons.
- (2) The Secretary of State may revoke a person's indefinite leave to enter or remain in the United Kingdom if the Secretary of State thinks – 40
- (a) that the leave was obtained by deception,
- (b) that the person would be liable to removal because of the deception, but

- (c) that the person cannot be removed for legal or practical reasons.
- (3) The Secretary of State may revoke a person’s indefinite leave to enter or remain in the United Kingdom if the person, or someone of whom he is a dependant, ceases to be a refugee as a result of –
- (a) voluntarily availing himself of the protection of his country of nationality, 5
  - (b) voluntarily re-acquiring a lost nationality,
  - (c) acquiring the nationality of a country other than the United Kingdom and availing himself of its protection, or
  - (d) voluntarily establishing himself in a country in respect of which he was a refugee. 10
- (4) In this section –
- “indefinite leave” has the meaning given by section 33(1) of the Immigration Act 1971 (c. 77) (interpretation),
  - “liable to deportation” has the meaning given by section 3(5) and (6) of that Act (deportation), 15
  - “refugee” has the meaning given by the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol, and
  - “removed” means removed from the United Kingdom under –
    - (a) paragraph 9 or 10 of Schedule 2 to the Immigration Act 1971 (control of entry: directions for removal), or 20
    - (b) section 10(1)(b) of the Immigration and Asylum Act 1999 (c. 33) (removal of persons unlawfully in United Kingdom: deception).
- (5) A power under subsection (1) or (2) to revoke leave may be exercised –
- (a) in respect of leave granted before this section comes into force; 25
  - (b) in reliance on anything done before this section comes into force.
- (6) A power under subsection (3) to revoke leave may be exercised –
- (a) in respect of leave granted before this section comes into force, but
  - (b) only in reliance on action taken after this section comes into force.
- (7) In section 10(1) of the Immigration and Asylum Act 1999 (removal of persons unlawfully in United Kingdom) after paragraph (b) (and before the word “or”) there shall be inserted –
- “(ba) his indefinite leave to enter or remain has been revoked under section 55(3) of the Nationality, Immigration and Asylum Act 2002 (person ceasing to be refugee);”.
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## 56 No removal while claim for asylum pending

- (1) While a person’s claim for asylum is pending he may not be –
- (a) removed from the United Kingdom in accordance with a provision of the Immigration Acts, or
  - (b) required to leave the United Kingdom in accordance with a provision of the Immigration Acts. 40
- (2) In this section –
- (a) “claim for asylum” means a claim by a person that it would be contrary to the United Kingdom’s obligations under the Refugee Convention to remove him from or require him to leave the United Kingdom, and 45

- (b) a person’s claim is pending until he is given notice of the Secretary of State’s decision on it.
- (3) In subsection (2) “the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol.
- (4) Nothing in this section shall prevent any of the following while a claim for asylum is pending – 5
  - (a) the giving of a direction for the claimant’s removal from the United Kingdom,
  - (b) the making of a deportation order in respect of the claimant, or
  - (c) the taking of any other interim or preparatory action. 10
- (5) Section 15 of the Immigration and Asylum Act 1999 (c. 33) (protection from removal or deportation) shall cease to have effect.

### 57 No removal while appeal pending

- (1) While a person’s appeal under section 60(1) is pending he may not be – 15
  - (a) removed from the United Kingdom in accordance with a provision of the Immigration Acts, or
  - (b) required to leave the United Kingdom in accordance with a provision of the Immigration Acts.
- (2) In this section “pending” has the meaning given by section 82.
- (3) Nothing in this section shall prevent any of the following while an appeal is pending – 20
  - (a) the giving of a direction for the appellant’s removal from the United Kingdom,
  - (b) the making of a deportation order in respect of the appellant, or
  - (c) the taking of any other interim or preparatory action. 25
- (4) This section applies only to an appeal brought while the appellant is in the United Kingdom in accordance with section 71.

### 58 Removal of asylum-seeker to third country

- (1) The following shall be substituted for section 11 of the Immigration and Asylum Act 1999 (removal of asylum claimant under standing arrangements with member States) – 30

#### “11 Removal of asylum claimant under standing arrangement with member States

- (1) In determining whether a person in relation to whom a certificate has been issued under subsection (2) may be removed from the United Kingdom, a member State is to be regarded as – 35
  - (a) a place where a person’s life and liberty is not threatened by reason of his race, religion, nationality, membership of a particular social group, or political opinion; and
  - (b) a place from which a person will not be sent to another country otherwise than in accordance with the Refugee Convention. 40

- (2) Nothing in section 56 of the Nationality, Immigration and Asylum Act 2002 prevents a person who has made a claim for asylum (“the claimant”) from being removed from the United Kingdom to a member State if the Secretary of State has certified that –
- (a) the member State has accepted that, under standing arrangements, it is the responsible State in relation to the claimant’s claim for asylum; and 5
  - (b) in his opinion, the claimant is not a national or citizen of the member State to which he is to be sent.
- (3) Subsection (4) applies where a person who is the subject of a certificate under subsection (2)(a) – 10
- (a) has instituted an appeal under section 60(1) of the Nationality, Immigration and Asylum Act 2002 (immigration appeal), and
  - (b) has made a claim of the kind described in section 72(2)(a) of that Act (breach of human rights). 15
- (4) The person may not be removed from the United Kingdom in reliance upon this section unless –
- (a) the appeal is finally determined, withdrawn or abandoned (within the meaning of section 82 of that Act), or
  - (b) the Secretary of State has issued a certificate in relation to the claim referred to in subsection (3)(b) above under section 72(2)(b) of that Act (clearly unfounded claim). 20
- (5) In this section “standing arrangements” means arrangements in force between two or more member States for determining which State is responsible for considering applications for asylum.” 25
- (2) In section 12(2) of the Immigration and Asylum Act 1999 (c. 33) (removal of asylum claimant to third country) for “Nothing in section 15 prevents” there shall be substituted “Nothing in section 56 of the Nationality, Immigration and Asylum Act 2002 prevents”.

## PART 5

30

### IMMIGRATION AND ASYLUM APPEALS

#### *Appeal to adjudicator*

## 59 Adjudicators

- (1) The Lord Chancellor shall appoint adjudicators for the purposes of this Part.
- (2) A person is eligible for appointment as an adjudicator only if he – 35
- (a) has a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41),
  - (b) is an advocate or solicitor in Scotland of at least seven years’ standing,
  - (c) is a member of the Bar of Northern Ireland, or a solicitor of the Supreme Court of Northern Ireland, of at least seven years’ standing, or 40
  - (d) has legal or other experience which in the Lord Chancellor’s opinion makes him suitable for appointment.
- (3) The Lord Chancellor –
- (a) shall appoint one of the adjudicators as Chief Adjudicator,



- (b) may appoint one of the adjudicators as Deputy Chief Adjudicator, and
  - (c) may appoint one or more adjudicators as Regional Adjudicator.
- (4) The Chief Adjudicator shall perform such functions as the Lord Chancellor may assign to him.
- (5) The Deputy Chief Adjudicator – 5
- (a) shall act for the Chief Adjudicator if he is unable to act or unavailable, and
  - (b) shall perform such other functions as the Chief Adjudicator may delegate or assign to him.
- (6) A Regional Adjudicator shall perform such functions as the Chief Adjudicator may assign to him. 10
- (7) Schedule 3 (which makes further provision about adjudicators) shall have effect.

## 60 Right of appeal: general

- (1) Where an immigration decision is made in respect of a person he may appeal to an adjudicator. 15
- (2) In this Part “immigration decision” means –
- (a) refusal of leave to enter the United Kingdom,
  - (b) refusal of entry clearance,
  - (c) refusal of leave to remain in the United Kingdom, 20
  - (d) refusal of a certificate of entitlement,
  - (e) refusal to vary a person’s leave to enter or remain in the United Kingdom if the result of the refusal is that the person has no leave to enter or remain,
  - (f) variation of a person’s leave to enter or remain in the United Kingdom if when the variation takes effect the person has no leave to enter or remain, 25
  - (g) revocation under section 55 of this Act of indefinite leave to enter or remain in the United Kingdom,
  - (h) a decision that a person is to be removed from the United Kingdom by way of directions under section 10 of the Immigration and Asylum Act 1999 (c. 33) (removal of person unlawfully in United Kingdom), 30
  - (i) a decision that an illegal entrant is to be removed from the United Kingdom by way of directions under paragraphs 8 to 10 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: removal), 35
  - (j) a decision to make a deportation order under section 5(1) of that Act, and
  - (k) refusal to revoke a deportation order under section 5(2) of that Act.
- (3) The right of appeal under subsection (1) is subject to the exceptions and limitations specified in this Part. 40

## 61 Appeal: claim for asylum

- (1) This section applies where a person makes a claim for asylum and –
- (a) his claim is rejected by the Secretary of State, but

- (b) he is granted leave to enter or remain in the United Kingdom for a period exceeding one year (whether in response to a deemed application under section 93 or in response to a separate application).
- (2) The person may appeal to an adjudicator against the rejection of his claim for asylum. 5
- (3) In this section “claim for asylum” means a claim made to the Secretary of State by a person that to remove him from or to require him to leave the United Kingdom would be contrary to the United Kingdom’s obligations under the Refugee Convention.
- 62 Grounds of appeal 10**
- (1) An appeal under section 60(1) against an immigration decision must be brought on one or more of the following grounds –
- (a) that the decision is not in accordance with immigration rules;
- (b) that the decision is unlawful by virtue of section 19B of the Race Relations Act 1976 (c. 74) (discrimination by public authorities); 15
- (c) that the decision is unlawful under section 6 of the Human Rights Act 1998 (c. 42) (public authority not to act contrary to Human Rights Convention) as being incompatible with the appellant’s Convention rights;
- (d) that the decision breaches the United Kingdom’s obligations in respect of the appellant under the Community Treaties; 20
- (e) that the decision is otherwise not in accordance with the law;
- (f) that the person taking the decision should have exercised differently a discretion conferred by immigration rules;
- (g) that removal of the appellant from the United Kingdom in consequence of the immigration decision would breach the United Kingdom’s obligations under the Refugee Convention; 25
- (h) that the appellant has been notified of a country to which it is proposed to remove him in consequence of the immigration decision and objects to being removed to that country. 30
- (2) An appeal may be brought on the ground specified in subsection (1)(h) only if the appellant –
- (a) specifies a country as an alternative destination, and
- (b) submits to the Secretary of State, before the appeal is commenced, documentary evidence that he would be allowed to enter that country. 35
- 63 Matters to be considered**
- (1) If an appellant under section 60(1) makes a statement under section 92, the adjudicator shall consider and determine any matter raised in the statement.
- (2) Subsection (1) applies to a statement made under section 92 –
- (a) whether the statement was made before or after the appeal was commenced, but
- (b) only if the statement was required by virtue of the application or decision to which the appeal relates. 40
- (3) On an appeal under section 60(1) against an immigration decision an adjudicator may consider evidence about any matter which he thinks relevant 45

to the substance of the decision, including evidence which concerns a matter arising after the date of the decision.

- (4) But in relation to an appeal under section 60(1) against refusal of entry clearance or refusal of a certificate of entitlement –
  - (a) subsection (3) shall not apply, and
  - (b) the adjudicator may consider only evidence which was available to the person who took the decision to refuse.

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#### 64 Consolidation of appeals

- (1) This section applies where a person appeals against an immigration decision under section 60(1) while an appeal by him under that section against another immigration decision is pending.
- (2) The two appeals shall be consolidated in accordance with rules under section 84.

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#### 65 Successful appeal: direction

- (1) If an adjudicator allows an appeal under section 60 he may give a direction for the purpose of giving effect to his decision.
- (2) A person responsible for making an immigration decision shall act in accordance with any relevant direction under subsection (1).
- (3) But a direction under this section shall not have effect while an appeal under section 79 or a further appeal –
  - (a) could be brought (ignoring any possibility of an appeal out of time with permission), or
  - (b) has been brought and has not been finally determined.
- (4) A direction under subsection (1) shall be treated as part of the determination of the appeal for the purposes of section 79.

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#### *Exceptions and limitations*

#### 66 Ineligibility

- (1) This section applies to an immigration decision of a kind referred to in section 60(2)(a), (b), (c), (e) or (f).
- (2) A person may not appeal under section 60(1) against an immigration decision which is taken wholly or partly on the grounds that he or a person of whom he is a dependant –
  - (a) does not satisfy a requirement as to age, nationality or citizenship specified in immigration rules,
  - (b) does not have an immigration document of a particular kind (or any immigration document),
  - (c) is seeking to be in the United Kingdom for a period greater than that permitted in his case by immigration rules, or
  - (d) is seeking to enter or remain in the United Kingdom for a purpose other than one for which entry or remaining is permitted in accordance with immigration rules.

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- (3) In subsection (2)(b) “immigration document” means –
- (a) entry clearance,
  - (b) a passport,
  - (c) a work permit or other immigration employment document within the meaning of section 94, and
  - (d) a document which relates to a national of a country other than the United Kingdom and which is designed to serve the same purpose as a passport.
- 5
- 67 Compliance with procedure**
- (1) This section applies to an immigration decision of a kind referred to in section 60(2)(a), (b), (c), (d), (e) or (f). 10
- (2) A person may not appeal under section 60(1) against an immigration decision which is taken wholly or partly on the grounds that he or a person of whom he is a dependant –
- (a) has not paid a prescribed fee, or
  - (b) has failed to use a prescribed form or to follow a prescribed procedure.
- 15
- (3) In subsection (2) “prescribed” means prescribed by or under an enactment.
- 68 Visitor or student without entry clearance**
- (1) This section applies to a person who applies for leave to enter the United Kingdom –
- (a) as a visitor,
  - (b) in order to follow a course of study for which he has been accepted and which will not last more than six months,
  - (c) in order to study but without having been accepted for a course, or
  - (d) as the dependant of a person who applies for leave to enter as a visitor or for a purpose described in paragraph (b) or (c).
- 20
- (2) A person may not appeal under section 60(1) against refusal of leave to enter the United Kingdom if at the time of the refusal he does not have entry clearance. 25
- 69 Non-family visitor** 30
- (1) A person who applies for entry clearance for the purpose of entering the United Kingdom as a visitor may appeal under section 60(1) against refusal of entry clearance only if –
- (a) the application was made for the purpose of visiting a member of the applicant’s family, and
  - (b) he pays such fee (if any) as is prescribed.
- 35
- (2) In subsection (1) the reference to a member of the applicant’s family shall be construed in accordance with regulations.
- (3) Regulations under subsection (2) may, in particular, make provision wholly or partly by reference to the duration of two individuals’ residence together. 40

## 70 Student

A person may not appeal under section 60(1) against refusal of entry clearance if he seeks it –

- (a) in order to follow a course of study for which he has been accepted and which will not last more than six months, 5
- (b) in order to study but without having been accepted for a course, or
- (c) as the dependant of a person seeking entry clearance for a reason in paragraph (a) or (b).

## 71 Appeal from within United Kingdom: general

- (1) A person may not appeal under section 60(1) while he is in the United Kingdom unless his appeal is of a kind to which this section applies. 10
- (2) This section applies to an appeal against –
  - (a) refusal of a certificate of entitlement,
  - (b) refusal to vary a person’s leave to enter or remain in the United Kingdom, 15
  - (c) variation of a person’s leave to enter or remain in the United Kingdom,
  - (d) revocation under section 55 of this Act of indefinite leave to enter or remain in the United Kingdom, or
  - (e) a decision to make a deportation order under section 5(1) of the Immigration Act 1971 (c. 77). 20
- (3) This section also applies to an appeal against refusal of leave to enter the United Kingdom where at the time of the refusal the appellant is in the United Kingdom and has –
  - (a) entry clearance, or
  - (b) a work permit. 25
- (4) This section also applies to an appeal against an immigration decision on an application which is made while the applicant is in the United Kingdom and which is made wholly or partly on the grounds –
  - (a) that the applicant’s removal from the United Kingdom would breach the United Kingdom’s obligations under the Refugee Convention, 30
  - (b) that the decision is unlawful under section 6 of the Human Rights Act 1998 (c. 42) (public authority not to act contrary to Human Rights Convention) as being incompatible with the appellant’s Convention rights, or
  - (c) that the decision breaches the United Kingdom’s obligations in respect of the appellant under the Community Treaties. 35

## 72 Appeal from within United Kingdom: “third country” removal

- (1) A person who is in the United Kingdom may not appeal under section 60(1) if a certificate has been issued in relation to him under section 11(2) or 12(2) of the Immigration and Asylum Act 1999 (c. 33) (removal of asylum claimants to “third country”). 40
- (2) But subsection (1) does not apply to an appeal if –
  - (a) the appellant claims that the decision against which he is appealing amounts to a breach of his Convention rights within the meaning of the Human Rights Act 1998, and 45

- (b) the Secretary of State has not certified that in his opinion the claim mentioned in paragraph (a) is clearly unfounded.

### 73 Appeal from outside United Kingdom: removal

A person who is outside the United Kingdom may not appeal under section 60(1) on the ground specified in section 62(1)(g). 5

### 74 Earlier right of appeal

- (1) A person may not appeal under section 60(1) against an immigration decision if the Secretary of State or an immigration officer certifies –
- (a) that the person was notified of a right to appeal under that section against another immigration decision (whether or not an appeal was brought and whether or not any appeal brought has been determined), 10
  - (b) that in the opinion of the Secretary of State or the immigration officer the person is seeking to appeal in order to delay his removal from the United Kingdom or the removal of a member of his family, and
  - (c) that in the opinion of the Secretary of State or the immigration officer the person has no other legitimate purpose for seeking to appeal. 15
- (2) A person may not bring an appeal under section 60(1) against an immigration decision if the Secretary of State or an immigration officer certifies that the immigration decision relates to an application or claim which relies on a ground or matter which the person – 20
- (a) raised on an appeal under that section against another immigration decision,
  - (b) should have included in a statement which he was required to make under section 92 in relation to another immigration decision or application, or 25
  - (c) would have been permitted or required to raise on an appeal against another immigration decision in respect of which he chose not to exercise a right of appeal.
- (3) A person may not rely on any ground or matter in an appeal under section 60(1) if the Secretary of State or an immigration officer certifies that the ground or matter was considered in another appeal under that section brought by that person. 30
- (4) A person may not rely on any ground or matter in an appeal under section 60(1) if the Secretary of State or an immigration officer certifies – 35
- (a) that the person should have raised that ground or matter in a statement under section 92 which was considered in another appeal under that section (or which would have been considered in another appeal under that section if the person had made the statement as required),
  - (b) that in the opinion of the Secretary of State or the immigration officer the person is seeking to rely on the ground or matter in order to delay his removal from the United Kingdom or the removal of a member of his family, and 40
  - (c) that in the opinion of the Secretary of State or the immigration officer the person has no other legitimate purpose for seeking to rely on the ground or matter. 45
- (5) In subsection (1) “notified” means notified in accordance with regulations under section 83.

- (6) Subsections (1) to (4) apply to prevent or restrict a person's right of appeal whether or not he has been outside the United Kingdom since an earlier right of appeal arose.

**75 National security, &c.**

- (1) An appeal under section 60(1) against an immigration decision in respect of a person may not be brought or continued if the Secretary of State certifies that the decision is or was taken – 5
- (a) by the Secretary of State wholly or partly on a ground listed in subsection (2), or
  - (b) in accordance with a direction of the Secretary of State which identifies the person to whom the decision relates and which is given wholly or partly on a ground listed in subsection (2). 10
- (2) The grounds mentioned in subsection (1) are that the person's exclusion or removal from the United Kingdom is – 15
- (a) in the interests of national security,
  - (b) in the interests of the relationship between the United Kingdom and another country, or
  - (c) desirable for another reason of a political kind.
- (3) In subsection (1)(a) and (b) a reference to the Secretary of State is to the Secretary of State acting in person. 20

**76 Other grounds of public good**

- (1) This section applies to an immigration decision of a kind referred to in section 60(2)(a) or (b).
- (2) An appeal under section 60(1) against an immigration decision may not be brought or continued if the Secretary of State certifies that the decision is or was taken – 25
- (a) by the Secretary of State wholly or partly on the ground that the exclusion or removal from the United Kingdom of the person to whom the decision relates is conducive to the public good, or
  - (b) in accordance with a direction of the Secretary of State which identifies the person to whom the decision relates and which is given wholly or partly on that ground. 30
- (3) In subsection (2)(a) and (b) a reference to the Secretary of State is to the Secretary of State acting in person.

**77 Sections 72, 75 and 76: appeal in progress 35**

- (1) This section applies where a certificate is issued under section 72, 75 or 76 in respect of a pending appeal.
- (2) The appeal shall lapse.

*Appeal from adjudicator***78 Immigration Appeal Tribunal**

- (1) There shall continue to be an Immigration Appeal Tribunal.
- (2) Schedule 4 (which makes provision about the Tribunal) shall have effect.

**79 Appeal to Tribunal**

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A party to an appeal to an adjudicator under section 60 or 61 may, with the permission of the Immigration Appeal Tribunal, appeal to the Tribunal against the adjudicator's determination on a point of law.

**80 Decision**

- (1) On an appeal under section 79 the Immigration Appeal Tribunal may – 10
  - (a) affirm the adjudicator's decision;
  - (b) make any decision which the adjudicator could have made;
  - (c) remit the appeal to an adjudicator;
  - (d) affirm a direction given by the adjudicator under section 65;
  - (e) vary a direction given by the adjudicator under that section; 15
  - (f) give any direction which the adjudicator could have given under that section.
- (2) In reaching their decision on an appeal under section 79 the Tribunal may consider evidence about any matter which they think relevant to the substance of the decision against which the appeal to the adjudicator was brought under section 60 or 61, including evidence which concerns a matter arising after the date of the decision or arising after the adjudicator's decision. 20
- (3) But where the appeal under section 60 was against refusal of entry clearance or refusal of a certificate of entitlement – 25
  - (a) subsection (2) shall not apply, and
  - (b) the Tribunal may consider only evidence which was available to the person who took the decision to refuse.
- (4) In remitting an appeal to an adjudicator under subsection (1)(c) the Tribunal may, in particular – 30
  - (a) require the adjudicator to determine the appeal in accordance with directions of the Tribunal;
  - (b) require the adjudicator to take additional evidence with a view to the appeal being determined by the Tribunal.

**81 Appeal from Tribunal**

- (1) Where the Immigration Appeal Tribunal determines an appeal under section 79 a party to the appeal may bring a further appeal on a point of law – 35
  - (a) where the original decision of the adjudicator was made in Scotland, to the Court of Session, or
  - (b) in any other case, to the Court of Appeal.
- (2) An appeal under this section may be brought only with the permission of – 40
  - (a) the Tribunal, or



- (b) if the Tribunal refuses permission, the court referred to in subsection (1)(a) or (b).
- (3) The remittal of an appeal to an adjudicator under section 80(1)(c) is not a determination of the appeal for the purposes of subsection (1) above.

*Procedure*

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**82 Pending appeal**

- (1) An appeal under section 60(1) is pending during the period –
  - (a) beginning when it is instituted, and
  - (b) ending when it is finally determined, withdrawn or abandoned.
- (2) An appeal under section 60(1) is not finally determined for the purposes of subsection (1)(b) while a further appeal –
  - (a) has been instituted and is not yet finally determined, withdrawn or abandoned, or
  - (b) may be brought (ignoring the possibility of an appeal out of time with permission).
- (3) The remittal of an appeal to an adjudicator under section 80(1)(c) is not a final determination for the purposes of subsection (2) above.
- (4) An appeal under section 60(1) shall be treated as abandoned if the appellant –
  - (a) is granted leave to enter or remain in the United Kingdom, or
  - (b) leaves the United Kingdom.
- (5) An appeal under section 60(1)(a), (c), (e) or (f) shall be treated as finally determined if a deportation order is made against the appellant.

**83 Notice of immigration decision**

- (1) The Secretary of State may make regulations requiring a person to be given written notice where an immigration decision is taken in respect of him.
- (2) The regulations may, in particular, provide that a notice under subsection (1) of a decision against which the person is entitled to appeal under section 60(1) must state –
  - (a) that there is a right of appeal under that section, and
  - (b) how and when that right may be exercised.
- (3) The regulations may make provision (which may include presumptions) about service.

**84 Rules**

- (1) The Lord Chancellor may make rules –
  - (a) regulating the exercise of the right of appeal under section 60, 61 or 79;
  - (b) prescribing procedure to be followed in connection with an appeal under section 60, 61 or 79.
- (2) In particular, rules under subsection (1) –
  - (a) must entitle an appellant to be legally represented at any hearing of his appeal;

(b)	may enable or require an appeal to be determined without a hearing;	
(c)	may enable or require an appeal to be dismissed without substantive consideration where practice or procedure has not been complied with;	
(d)	may enable or require an adjudicator or the Immigration Appeal Tribunal to treat an appeal as abandoned in specified circumstances;	5
(e)	may enable or require an adjudicator or the Tribunal to determine an appeal in the absence of parties in specified circumstances;	
(f)	may enable or require an adjudicator or the Tribunal to determine an appeal by reference only to written submissions in specified circumstances;	10
(g)	may make provision about the adjournment of an appeal by an adjudicator (which may include provision prohibiting an adjudicator from adjourning except in specified circumstances);	
(h)	may make provision about the treatment of adjourned appeals by an adjudicator (which may include provision requiring an adjudicator to determine an appeal within a specified period);	15
(i)	may make provision about the use of electronic communication in the course of or in connection with a hearing;	
(j)	may make provision about the remittal of an appeal by the Tribunal to an adjudicator under section 80;	20
(k)	may enable an adjudicator to set aside a decision of himself or another adjudicator;	
(l)	may enable the Tribunal to set aside a decision of the Tribunal;	
(m)	must make provision about the consolidation of appeals in accordance with section 64 (which may, in particular, include provision for the adjournment or remission of a further appeal under section 79 or 81);	25
(n)	may confer ancillary powers on an adjudicator or the Tribunal;	
(o)	may confer a discretion on an adjudicator or the Tribunal;	
(p)	may require an adjudicator or the Tribunal to give notice of a determination to a specified person.	30
(3)	A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed in accordance with rules under subsection (1) to attend before an adjudicator or the Tribunal –	
(a)	to give evidence, or	
(b)	to produce a document.	35
(4)	A person who is guilty of an offence under subsection (3) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.	
<b>85</b>	<b>Practice directions</b>	
(1)	The President of the Immigration Appeal Tribunal may give directions as to the practice to be followed by the Tribunal.	40
(2)	The Chief Adjudicator may give directions as to the practice to be followed by adjudicators.	
<b>86</b>	<b>Forged document: proceedings in private</b>	
(1)	This section applies where it is alleged –	
(a)	that a document relied on by a party to an appeal under section 60, 61 or 79 is a forgery, and	45

- (b) that disclosure to that party of a matter relating to the detection of the forgery would be contrary to the public interest.
- (2) The adjudicator or the Immigration Appeal Tribunal –
  - (a) must investigate the allegation in private, and
  - (b) may proceed in private so far as necessary to prevent disclosure of the matter referred to in subsection (1)(b). 5

*General*

**87 Grants**

- (1) *The Secretary of State may make a grant to a voluntary organisation which provides –*
  - (a) *advice or assistance to persons who have a right of appeal under this Part;* 10
  - (b) *other services for the welfare of those persons.*
- (2) *A grant under this section may be subject to terms or conditions (which may include conditions as to repayment).*

**88 Regulations**

- (1) Regulations under this Part shall be made by the Secretary of State. 15
- (2) Regulations and rules under this Part –
  - (a) must be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Regulations and rules under this Part – 20
  - (a) may make provision which applies generally or only in a specified case or in specified circumstances,
  - (b) may make different provision for different cases or circumstances,
  - (c) may include consequential, transitional or incidental provision, and
  - (d) may include savings. 25

**89 Interpretation**

- (1) In this Part, unless a contrary intention appears –
  - “certificate of entitlement” has the meaning given by sections 3(9) and 33(1) of the Immigration Act 1971 (c. 77) (control of entry: proof of right of abode), 30
  - “entry clearance” has the meaning given by section 33(1) of that Act (interpretation),
  - “the Human Rights Convention” has the same meaning as “the Convention” in the Human Rights Act 1998 (c. 42),
  - “illegal entrant” has the meaning given by section 33(1) of the Immigration Act 1971, 35
  - “immigration rules” means rules under section 1(4) of that Act (general immigration rules),
  - “prescribed” means prescribed by regulations,
  - “the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol, 40

“visitor” means a visitor in accordance with immigration rules, and  
“work permit” has the meaning given by section 33(1) of the Immigration Act 1971 (c. 77) (interpretation).

- (2) A reference to varying leave to enter or remain in the United Kingdom does not include a reference to adding, varying or revoking a condition of leave. 5

## 90 Repeal

- (1) Part IV of the Immigration and Asylum Act 1999 (c. 33) (appeals) shall cease to have effect.
- (2) Schedule 5 (which makes transitional provision in connection with the repeal of Part IV of that Act and its replacement by this Part) shall have effect. 10
- (3) Schedule 6 (consequential amendments) shall have effect.

## PART 6

### IMMIGRATION PROCEDURE

#### *Application for leave to enter or remain*

## 91 Leave pending decision on variation application 15

The following shall be substituted for section 3C of the Immigration Act 1971 (continuation of leave to enter or remain pending decision on application for variation) –

### “3C Continuation of leave pending variation decision

- (1) This section applies if – 20
- (a) a person who has limited leave to enter or remain in the United Kingdom applies to the Secretary of State for variation of the leave,
  - (b) the application for variation is made before the leave expires, and 25
  - (c) the leave expires without the application for variation having been decided.
- (2) The leave is extended by virtue of this section during any period when – 30
- (a) the application for variation is neither decided nor withdrawn,
  - (b) an appeal under section 60(1) could be brought against the decision on the application for variation (ignoring any possibility of an appeal out of time with permission), or
  - (c) an appeal under that section against that decision is pending (within the meaning of section 82). 35
- (3) In this section a reference to an application being decided is a reference to notice of the decision being given in accordance with regulations under section 83 of the Nationality, Immigration and Asylum Act 2002 (notice of immigration decision).”

## 92 Requirement to state additional grounds for application

- (1) This section applies to a person if –
  - (a) he has made an application to enter or remain in the United Kingdom, or
  - (b) an immigration decision within the meaning of section 60 has been taken in respect of him. 5
- (2) The Secretary of State or an immigration officer may by notice in writing require the person to state –
  - (a) his reasons for wishing to enter or remain in the United Kingdom,
  - (b) any grounds on which he should be permitted to enter or remain in the United Kingdom, and 10
  - (c) any grounds on which he should not be removed from the United Kingdom.
- (3) A statement under subsection (2) need not repeat reasons or grounds set out in –
  - (a) the application mentioned in subsection (1)(a), or
  - (b) an application to which the immigration decision mentioned in subsection (1)(b) relates. 15

## 93 Deemed application by asylum-seeker

- (1) Where a person makes a claim for asylum he shall be treated as having also made –
  - (a) an application for leave to enter the United Kingdom, if his claim for asylum is made on arrival in the United Kingdom, or
  - (b) an application for leave to remain in the United Kingdom, if his claim for asylum is made while he is in the United Kingdom. 20
- (2) In this section “claim for asylum” means a claim made to the Secretary of State by a person that to remove him from or to require him to leave the United Kingdom would be contrary to the United Kingdom’s obligations under the Convention relating to the status of Refugees done at Geneva on 28th July 1951 and its Protocol. 25
- (3) Where a person makes an application for leave to enter or remain in the United Kingdom in accordance with immigration rules –
  - (a) this section shall not apply to him, or
  - (b) if this section has already begun to apply to him, the deemed application under subsection (1) shall be treated as having lapsed. 30

### *Work permit*

## 94 Fee for work permit, &c.

- (1) The Secretary of State may by regulations require an application for an immigration employment document to be accompanied by a fee prescribed in the regulations. 40
- (2) In subsection (1) “immigration employment document” means –
  - (a) a work permit, and

- (b) any other document which relates to employment and is issued for a purpose of immigration rules or in connection with leave to enter or remain in the United Kingdom.
- (3) Regulations under subsection (1) –
- (a) may make provision which applies generally or only in specified cases or circumstances (or except in specified cases or circumstances), and 5
- (b) may make different provision for different cases or circumstances.
- (4) In particular, regulations by virtue of subsection (3)(a) which create an exception may make provision by reference to an arrangement with the Secretary of State under which a payment is made in respect of – 10
- (a) a specified number or class of applications, or
- (b) a specified period of time.
- (5) Regulations under subsection (1) –
- (a) must be made by statutory instrument, and
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament. 15
- (6) In this section –
- “immigration rules” has the meaning given by section 33(1) of the Immigration Act 1971 (c. 77) (interpretation), and
- “work permit” has the meaning given by that section. 20
- 95 Advice about work permit, &c.**
- (1) Section 82 of the Immigration and Asylum Act 1999 (c. 33) (immigration advice and services: interpretation) shall be amended as follows.
- (2) In the definition of “relevant matters” in subsection (1), after paragraph (b) there shall be inserted – 25
- “(ba) an application for an immigration employment document;”.
- (3) At the end of the section add –
- “(3) In the definition of “relevant matters” in subsection (1) “immigration employment document” means –
- (a) a work permit (within the meaning of section 33(1) of the Immigration Act 1971 (interpretation)), and 30
- (b) any other document which relates to employment and is issued for a purpose of immigration rules or in connection with leave to enter or remain in the United Kingdom.”
- Authority-to-carry scheme* 35

**96 Authority to carry**

- (1) Regulations made by the Secretary of State may authorise him to require a person (a “carrier”) to pay a penalty if the carrier brings a passenger to the United Kingdom and –
- (a) the carrier was required by an authority-to-carry scheme to seek authority under the scheme to carry the passenger, and 40

- (b) the carrier did not seek authority before the journey to the United Kingdom commenced or was refused authority under the scheme.
- (2) An “authority-to-carry scheme” is a scheme operated by the Secretary of State which requires carriers to seek authority to bring passengers to the United Kingdom. 5
- (3) An authority-to-carry scheme must specify –
- (a) the class of carrier to which it applies (which may be defined by reference to a method of transport or otherwise), and
- (b) the class of passenger to which it applies (which may be defined by reference to nationality, the possession of specified documents or otherwise). 10
- (4) The Secretary of State may operate different authority-to-carry schemes for different purposes.
- (5) Where the Secretary of State makes regulations under subsection (1) he must –
- (a) identify in the regulations the authority-to-carry scheme to which they refer, and 15
- (b) lay the authority-to-carry scheme before Parliament.
- (6) Regulations under subsection (1) may, in particular –
- (a) apply or make provision similar to a provision of sections 40 to 43 of and Schedule 1 to the Immigration and Asylum Act 1999 (c. 33) (charge for passenger without document); 20
- (b) do anything which may be done under a provision of any of those sections;
- (c) amend any of those sections.
- (7) Regulations by virtue of subsection (6)(a) may, in particular – 25
- (a) apply a provision with modification;
- (b) apply a provision which confers power to make legislation.
- (8) The grant or refusal of authority under an authority-to-carry scheme shall not be taken to determine whether a person is entitled or permitted to enter the United Kingdom. 30
- (9) Regulations under this section –
- (a) must be made by statutory instrument, and
- (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

*Provision of information by traveller* 35

**97 Physical data: compulsory provision**

- (1) The Secretary of State may by regulations –
- (a) require an immigration application to be accompanied by specified information about external physical characteristics of the applicant;
- (b) enable an authorised person to require an individual who makes an immigration application to provide information about his external physical characteristics; 40
- (c) enable an authorised person to require an entrant to provide information about his external physical characteristics.

- 
- (2) In subsection (1) “immigration application” means an application for –
- (a) entry clearance,
  - (b) leave to enter or remain in the United Kingdom, or
  - (c) variation of leave to enter or remain in the United Kingdom.
- (3) Regulations under subsection (1) may not – 5
- (a) impose a requirement in respect of a person to whom section 141 of the Immigration and Asylum Act 1999 (c. 33) (fingerprinting) applies, during the relevant period within the meaning of that section, or
  - (b) enable a requirement to be imposed in respect of a person to whom that section applies, during the relevant period within the meaning of that section. 10
- (4) Regulations under subsection (1) may, in particular –
- (a) require, or enable an authorised person to require, the provision of information in a specified form;
  - (b) require an individual to submit, or enable an authorised person to require an individual to submit, to a specified process by means of which information is obtained or recorded; 15
  - (c) make provision about the effect of failure to provide information or to submit to a process (which may, in particular, include provision for an application to be disregarded or dismissed if a requirement is not satisfied); 20
  - (d) confer a function (which may include the exercise of a discretion) on an authorised person;
  - (e) require an authorised person to have regard to a code;
  - (f) require an authorised person to have regard to such provisions of a code as may be specified by direction of the Secretary of State; 25
  - (g) make provision about the use and retention of information provided (which may include provision permitting the use of information for specified purposes which do not relate to immigration);
  - (h) make provision which applies generally or only in specified cases or circumstances; 30
  - (i) make different provision for different cases or circumstances.
- (5) Regulations under subsection (1) must –
- (a) include provision about the destruction of information obtained or recorded by virtue of the regulations, 35
  - (b) require the destruction of information at the end of the period of ten years beginning with the day on which it is obtained or recorded in a case for which destruction at the end of another period is not required by or in accordance with the regulations, and
  - (c) include provision similar to section 143(2) and (10) to (13) of the Immigration and Asylum Act 1999 (fingerprints: destruction of copies and electronic data). 40
- (6) In so far as regulations under subsection (1) require an individual under the age of 16 to submit to a process, the regulations must make provision similar to section 141(3) to (5) and (13) of the Immigration and Asylum Act 1999 (fingerprints: children). 45
- (7) In so far as regulations under subsection (1) enable an authorised person to require an individual under the age of 16 to submit to a process, the regulations



must make provision similar to section 141(3) to (5), (12) and (13) of that Act (fingerprints: children).

- (8) Regulations under subsection (1) –
- (a) must be made by statutory instrument, and
  - (b) shall be subject to annulment pursuant to a resolution of either House of Parliament. 5
- (9) In this section –
- “authorised person” has the meaning given by section 141(5) of the Immigration and Asylum Act 1999 (c. 33) (authority to take fingerprints), 10
  - “code” has the meaning given by section 145(6) of that Act (code of practice),
  - “entrant” has the meaning given by section 33(1) of the Immigration Act 1971 (c. 77) (interpretation),
  - “entry clearance” has the meaning given by section 33(1) of that Act, and 15
  - “external physical characteristics” includes, in particular, features of the iris or any other part of the eye.
- (10) A reference in this section to an application for leave to enter or remain in the United Kingdom does not include a reference to an application which is treated as having been made by virtue of section 93 of this Act. 20

## 98 Physical data: voluntary provision

- (1) The Secretary of State may operate a scheme under which an individual may supply, or submit to the obtaining or recording of, information about his external physical characteristics to be used (wholly or partly) in connection with entry to the United Kingdom. 25
- (2) In particular, the Secretary of State may –
- (a) require an authorised person to use information supplied under a scheme;
  - (b) make provision about the collection, use and retention of information supplied under a scheme (which may include provision requiring an authorised person to have regard to a code); 30
  - (c) charge for participation in a scheme.
- (3) In this section the following expressions have the same meaning as in section 97 –
- (a) “authorised person”, 35
  - (b) “code”, and
  - (c) “external physical characteristics”.

## 99 Data collection under Immigration and Asylum Act 1999

- (1) The following shall be added at the end of section 144 of the Immigration and Asylum Act 1999 (collection of data about external physical characteristics) (which becomes subsection (1)) – 40
- “(2) In subsection (1) “external physical characteristics” includes, in particular, features of the iris or any other part of the eye.”

- (2) The following shall be inserted after section 145(2) of that Act (codes of practice) –

“(2A) A person exercising a power under regulations made by virtue of section 144 must have regard to such provisions of a code as may be specified.”

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*Disclosure of information by public authority*

**100 Local authority**

- (1) The Secretary of State may require a local authority to supply information for the purpose of establishing where a person is if the Secretary of State reasonably suspects that –

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- (a) the person has committed an offence under section 24(1)(a), (b), (c), (e) or (f) or 24A(1) of the Immigration Act 1971 (c. 77) (illegal entry, deception, &c.), and  
(b) the person is or has been resident in the local authority’s area.

- (2) A local authority shall comply with a requirement under this section.

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- (3) In the application of this section to England and Wales “local authority” means –

- (a) a county council,  
(b) a county borough council,  
(c) a district council,  
(d) a London borough council,  
(e) the Common Council of the City of London, and  
(f) the Council of the Isles of Scilly.

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- (4) In the application of this section to Scotland “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).

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- (5) In the application of this section to Northern Ireland –

- (a) a reference to a local authority shall be taken as a reference to the Northern Ireland Housing Executive, and  
(b) the reference to a local authority’s area shall be taken as a reference to Northern Ireland.

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**101 Inland Revenue**

- (1) The Commissioners of Inland Revenue may supply the Secretary of State with information for the purpose of establishing where a person is if the Secretary of State reasonably suspects –

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- (a) that the person does not have leave to enter or remain in the United Kingdom, and  
(b) that it is not lawful for the person to undertake employment in the United Kingdom.

- (2) The Commissioners of Inland Revenue may supply the Secretary of State with information for the purpose of establishing where a person is if the Secretary of State reasonably suspects that the person has undertaken employment in the United Kingdom in breach of –

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- (a) a condition attached to leave to enter or remain in the United Kingdom,
- (b) a restriction imposed under paragraph 21 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry), or
- (c) a restriction imposed under paragraph 2 of Schedule 3 to that Act (deportation).

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## 102 Police, &c.

Information may be supplied under section 20 of the Immigration and Asylum Act 1999 (c. 33) (supply of information to Secretary of State) for use for the purpose of determining whether an applicant for naturalisation under the British Nationality Act 1981 (c. 61) is of good character.

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## 103 Supply of document, &c. to Secretary of State

- (1) Section 20 of the Immigration and Asylum Act 1999 (supply of information to Secretary of State) shall be amended as follows.

- (2) After subsection (1) insert—

“(1A) This section also applies to a document or article which—

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- (a) comes into the possession of a person listed in subsection (1) or someone acting on his behalf, or
- (b) is discovered by a person listed in subsection (1) or someone acting on his behalf.”

- (3) In subsection (2) after “information” insert “, document or article”.

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- (4) After subsection (2) insert—

“(2A) The Secretary of State may—

- (a) retain for immigration purposes a document or article supplied to him under subsection (2), and
- (b) dispose of a document or article supplied to him under subsection (2) in such manner as he thinks appropriate (and the reference to use in subsection (2) includes a reference to disposal).”

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- (5) In subsection (6) after “information” insert “, documents or articles”.

## 104 Medical inspectors

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- (1) This section applies where a medical inspector reasonably suspects that a person examined under Schedule 2 to the Immigration Act 1971 (control on entry, &c.) is infected with a notifiable disease.

- (2) The medical inspector may disclose to a health service body—

- (a) the name of the person examined,
- (b) his place of residence in the United Kingdom,
- (c) the nature of the disease,
- (d) relevant details of the person’s medical history,
- (e) the grounds for the inspector’s suspicion (including the result of any test or examination which he has arranged to have carried out), and
- (f) the inspector’s opinion about action which the health service body should take.

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- (3) For the purposes of this section “health service body” in relation to a person means a body which carries out functions in an area which includes his place of residence and which is –
- (a) a Strategic Health Authority, Health Authority or Local Health Board established under or by virtue of the National Health Service Act 1977 (c. 49), 5
  - (b) a Health Board, Special Health Board or National Health Service Trust established under the National Health Service (Scotland) Act 1978 (c. 29), or
  - (c) a Health and Social Services Board established under the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)) or a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1)). 10
- (4) In this section – 15
- “medical inspector” means a person appointed under paragraph 1(2) of Schedule 2 to the Immigration Act 1971 (c. 77), and
- “notifiable disease” means a disease –
- (a) specified in section 10 of the Public Health (Control of Disease) Act 1984 (c. 22), or 20
  - (b) to which any enactment applies by virtue of regulations made under section 13 of that Act.

*Disclosure of information by private person*

**105 Employer**

- (1) The Secretary of State may require an employer to supply information about the earnings of an employee whom the Secretary of State reasonably suspects of having committed an offence under – 25
- (a) section 105(1)(a), (b) or (c) of the Immigration and Asylum Act 1999 (c. 33) (support for asylum-seeker: fraud), or
  - (b) section 106(1)(a), (b) or (c) of that Act (support for asylum-seeker: fraud). 30
- (2) The Secretary of State may require an employer to disclose compulsory records which relate to an employee whom the Secretary of State reasonably suspects of having committed an offence under section 24(1)(a), (b), (c), (e) or (f) or 24A(1) of the Immigration Act 1971 (illegal entry, deception, &c.). 35
- (3) In this section a reference to an employer or employee –
- (a) includes a reference to a former employer or employee, and
  - (b) shall be construed in accordance with section 8(8) of the Asylum and Immigration Act 1996 (c. 49) (restrictions on employment).
- (4) Where – 40
- (a) a business (the “employment agency”) arranges for one person (the “worker”) to provide services to another (the “client”), and
  - (b) the worker is not employed by the employment agency or the client, this section shall apply as if the employment agency were the worker’s employer while he provides services to the client. 45

## 106 Financial institution

- (1) The Secretary of State may require a financial institution to supply information about a person if the Secretary of State reasonably suspects that –
  - (a) the person has committed an offence under section 105(1)(a), (b) or (c) or 106(1)(a), (b) or (c) of the Immigration and Asylum Act 1999 (c. 33) (support for asylum-seeker: fraud), 5
  - (b) the information is relevant to the offence, and
  - (c) the institution has the information.
- (2) In this section “financial institution” means –
  - (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to accept deposits, and 10
  - (b) a building society (within the meaning given by the Building Societies Act 1986 (c. 53)).

## 107 Notice

- (1) A requirement to provide information under section 105 or 106 must be imposed by notice in writing specifying – 15
  - (a) the information,
  - (b) the manner in which it is to be provided, and
  - (c) the period of time within which it is to be provided.
- (2) A period of time specified in a notice under subsection (1)(c) – 20
  - (a) must begin with the date of receipt of the notice, and
  - (b) must not be less than ten working days.
- (3) A person on whom a notice is served under subsection (1) must provide the Secretary of State with –
  - (a) the information specified in the notice, 25
  - (b) a declaration that he does not have any of the information specified, or
  - (c) part of the information specified in the notice and a declaration that he does not have the remainder.
- (4) Information provided under subsection (3) must be provided –
  - (a) in the manner specified under subsection (1)(b), and 30
  - (b) within the time specified under subsection (1)(c).
- (5) A declaration provided under subsection (3) must be provided –
  - (a) in writing by or on behalf of the person making the declaration, and
  - (b) within the time specified under subsection (1)(c).
- (6) In this section “working day” means a day which is not – 35
  - (a) Saturday,
  - (b) Sunday,
  - (c) Christmas Day,
  - (d) Good Friday, or
  - (e) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in any part of the United Kingdom. 40

**108 Disclosure of information: offences**

- (1) A person commits an offence if without reasonable excuse he fails to comply with section 107(3).
- (2) A person who is guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale. 5
- (3) A person commits an offence if—
  - (a) he makes a declaration for the purpose of section 107(3)(b) or (c), and
  - (b) he does not reasonably believe the declaration to be true.
- (4) A person who is guilty of an offence under subsection (3) shall be liable on summary conviction to— 10
  - (a) imprisonment for a term not exceeding three months,
  - (b) a fine not exceeding level 5 on the standard scale, or
  - (c) both.

**109 Offence by body**

- (1) Subsection (2) applies where an offence under section 108 is committed by a body corporate and it is proved that the offence— 15
  - (a) was committed with the consent or connivance of an officer of the body, or
  - (b) was attributable to neglect on the part of an officer of the body.
- (2) The officer, as well as the body, shall be guilty of the offence. 20
- (3) In this section a reference to an officer of a body corporate includes a reference to—
  - (a) a director, manager or secretary,
  - (b) a person purporting to act as a director, manager or secretary, and
  - (c) if the affairs of the body are managed by its members, a member. 25
- (4) Where an offence under section 108 is committed by a partnership, each partner shall be guilty of the offence.

**110 Privilege against self-incrimination**

- (1) Information provided by a person pursuant to a requirement under section 105 or 106 shall not be admissible in evidence in criminal proceedings against— 30
  - (a) that person, or
  - (b) an officer or employee of that person.
- (2) This section shall not apply to proceedings for an offence under section 108.

*Immigration services***111 Immigration Services Commissioner**

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- (1) The following shall be inserted after paragraph 7(1) of Schedule 5 to the Immigration and Asylum Act 1999 (c. 33)(investigation by Commissioner: power of entry)—

- “(1A) This paragraph also applies if the Commissioner is investigating a matter under paragraph 5(5) and –
- (a) the matter is of a kind described in paragraph 5(3)(a), (b) or (d) (for which purpose a reference to an allegation shall be treated as a reference to a suspicion of the Commissioner), and
  - (b) there are reasonable grounds for believing that particular premises are being used in connection with the provision of immigration advice or immigration services by a registered person.”
- (2) The following shall be inserted after paragraph 3 of Schedule 6 to the Immigration and Asylum Act 1999 (c. 33) (registration by Commissioner) –
- “Variation of registration*
- 3A. The Commissioner may vary a person’s registration –
- (a) so as to make it have limited effect in any of the ways mentioned in paragraph 2(2); or
  - (b) so as to make it have full effect.”
- (3) The following shall be inserted after section 87(3)(e) of the Immigration and Asylum Act 1999 (Immigration Services Tribunal: jurisdiction) (before the word “or”) –
- “(ea) to vary a registration under paragraph 3A of that Schedule;”.

## PART 7

### OFFENCES

#### *Substance*

- 112 Assisting unlawful immigration, &c.**
- (1) The following shall be substituted for section 25 of the Immigration Act 1971 (c. 77) (assisting illegal entry) –
- “25 Assisting unlawful immigration to member State**
- (1) A person commits an offence if he –
- (a) knowingly facilitates the commission of a breach of immigration law by an individual who is not a citizen of the European Union, or
  - (b) does anything which he has reasonable cause to believe may facilitate the commission of a breach of immigration law by an individual who is not a citizen of the European Union.
- (2) In subsection (1) “immigration law” means a law which has effect in a member State and which controls, in respect of some or all persons who are not nationals of the State, entitlement to –
- (a) enter the State,
  - (b) travel within the State, or
  - (c) be in the State.

- 
- (3) A document issued by the government of a member State certifying a matter of law in that State –
- (a) shall be admissible in proceedings for an offence under this section, and
  - (b) shall be conclusive as to the matter certified. 5
- (4) Subsection (1) applies to anything done –
- (a) in the United Kingdom,
  - (b) outside the United Kingdom by an individual to whom subsection (5) applies, or
  - (c) outside the United Kingdom by a body incorporated under the law of a part of the United Kingdom. 10
- (5) This subsection applies to –
- (a) a British citizen,
  - (b) a British overseas territories citizen,
  - (c) a British National (Overseas), 15
  - (d) a British Overseas citizen,
  - (e) a person who is a British subject under the British Nationality Act 1981 (c. 61), and
  - (f) a British protected person within the meaning of that Act.
- (6) A person guilty of an offence under this section shall be liable – 20
- (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, to a fine or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both. 25
- 25A Helping asylum-seeker to enter United Kingdom**
- (1) A person commits an offence if –
- (a) he knowingly and for gain facilitates the arrival in the United Kingdom of an individual, and
  - (b) he knows or has reasonable cause to believe that the individual is an asylum-seeker. 30
- (2) In this section “asylum-seeker” means a person who intends to claim that to remove him from or require him to leave the United Kingdom would be contrary to the United Kingdom’s obligations under –
- (a) the Refugee Convention (within the meaning given by section 167(1) of the Immigration and Asylum Act 1999 (c. 33) (interpretation)), or 35
  - (b) the Human Rights Convention (within the meaning given by that section).
- (3) Subsection (1) does not apply to anything done by a person acting on behalf of an organisation which aims to assist asylum-seekers. 40
- (4) Subsections (4) to (7) of section 25 apply for the purpose of the offence in subsection (1) of this section as they apply for the purpose of the offence in subsection (1) of that section.



**25B Assisting entry to United Kingdom in breach of deportation order**

- (1) A person commits an offence if he –
- (a) knowingly facilitates a breach of a deportation order in force against a citizen of the European Union, or
  - (b) does anything which he has reasonable cause to believe may facilitate a breach of a deportation order in force against a citizen of the European Union. 5
- (2) Subsections (4) to (6) of section 25 apply for the purpose of an offence under this section as they apply for the purpose of an offence under that section. 10

**25C Forfeiture of vehicle, ship or aircraft**

- (1) This section applies where a person is convicted on indictment of an offence under section 25, 25A or 25B.
- (2) The court may order the forfeiture of a vehicle used or intended to be used in connection with the offence if the convicted person – 15
- (a) owned the vehicle at the time the offence was committed,
  - (b) was at that time a director, secretary or manager of a company which owned the vehicle,
  - (c) was at that time in possession of the vehicle under a hire-purchase agreement, 20
  - (d) was at that time a director, secretary or manager of a company which was in possession of the vehicle under a hire-purchase agreement, or
  - (e) was driving the vehicle in the course of the commission of the offence. 25
- (3) The court may order the forfeiture of a ship or aircraft used or intended to be used in connection with the offence if the convicted person –
- (a) owned the ship or aircraft at the time the offence was committed,
  - (b) was at that time a director, secretary or manager of a company which owned the ship or aircraft, 30
  - (c) was at that time in possession of the ship or aircraft under a hire-purchase agreement,
  - (d) was at that time a director, secretary or manager of a company which was in possession of the ship or aircraft under a hire-purchase agreement, 35
  - (e) was at that time a charterer of the ship or aircraft, or
  - (f) committed the offence while acting as captain of the ship or aircraft.
- (4) But in a case to which subsection (3)(a) or (b) does not apply, forfeiture may be ordered only – 40
- (a) in the case of a ship, if subsection (5) or (6) applies;
  - (b) in the case of an aircraft, if subsection (5) or (7) applies.
- (5) This subsection applies where –

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- (a) in the course of the commission of the offence, the ship or aircraft brought more than 20 illegal entrants to the United Kingdom, and
- (b) a person who, at the time the offence was committed, owned the ship or aircraft or was a director, secretary or manager of a company which owned it, knew or ought to have known of the intention to use it to bring illegal entrants to the United Kingdom. 5
- (6) This subsection applies where a ship’s gross tonnage is less than 500 tons. 10
- (7) This subsection applies where the maximum weight at which an aircraft (which is not a hovercraft) may take off in accordance with its certificate of airworthiness is less than 5,700 kilogrammes.
- (8) Where a person who claims to have an interest in a vehicle, ship or aircraft applies to a court to make representations on the question of forfeiture, the court may not make an order under this section in respect of the ship, aircraft or vehicle unless the person has been given an opportunity to make representations.” 15
- (2) Section 25A of the Immigration Act 1971 (c. 77) (detention of vehicle, ship or aircraft) becomes section 25D. 20

### 113 Traffic in prostitution

- (1) A person commits an offence if he arranges or facilitates the arrival in the United Kingdom of an individual (the “passenger”) and –
- (a) he intends to exercise control over prostitution by the passenger in the United Kingdom or elsewhere, or 25
- (b) he believes that another person is likely to exercise control over prostitution by the passenger in the United Kingdom or elsewhere.
- (2) A person commits an offence if he arranges or facilitates travel within the United Kingdom by an individual (the “passenger”) in respect of whom he believes that an offence under subsection (1) may have been committed and –
- (a) he intends to exercise control over prostitution by the passenger in the United Kingdom or elsewhere, or 30
- (b) he believes that another person is likely to exercise control over prostitution by the passenger in the United Kingdom or elsewhere.
- (3) A person commits an offence if he arranges or facilitates the departure from the United Kingdom of an individual (the “passenger”) and –
- (a) he intends to exercise control over prostitution by the passenger outside the United Kingdom, or 35
- (b) he believes that another person is likely to exercise control over prostitution by the passenger outside the United Kingdom. 40
- (4) For the purposes of subsections (1) to (3) a person exercises control over prostitution by another if for purposes of gain he exercises control, direction or influence over the prostitute’s movements in a way which shows that he is aiding, abetting or compelling the prostitution.
- (5) A person guilty of an offence under this section shall be liable – 45

- (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, to a fine or to both, or
- (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

**114 Section 113: supplementary** 5

- (1) Subsections (1) to (3) of section 113 apply to anything done –
  - (a) in the United Kingdom,
  - (b) outside the United Kingdom by an individual to whom subsection (2) applies, or
  - (c) outside the United Kingdom by a body incorporated under the law of a part of the United Kingdom. 10
- (2) This subsection applies to –
  - (a) a British citizen,
  - (b) a British overseas territories citizen,
  - (c) a British National (Overseas), 15
  - (d) a British Overseas citizen,
  - (e) a person who is a British subject under the British Nationality Act 1981 (c. 61), and
  - (f) a British protected person within the meaning of that Act.
- (3) Section 25C of the Immigration Act 1971 (c. 77) (forfeiture of vehicle, &c.) shall apply to conviction of an offence under section 113 as it applies to conviction of an offence under section 25(1)(a) or (b). 20
- (4) The following shall be inserted after paragraph 2(m) of Schedule 4 to the Criminal Justice and Court Services Act 2000 (c. 43) (offence against child) –
  - “(n) an offence under section 113 of the Nationality, Immigration and Asylum Act 2002 (traffic in prostitution).” 25

**115 Employment**

- (1) Section 8 of the Asylum and Immigration Act 1996 (c. 49) (employment: offence) shall be amended as follows.
- (2) For subsection (2) (defence) substitute – 30
  - “(2) It is a defence for a person charged with an offence under this section to prove that before the employment began any relevant requirement of an order of the Secretary of State under subsection (2A) was complied with.
- (2A) An order under this subsection may – 35
  - (a) require the production to an employer of a document of a specified description;
  - (b) require the production to an employer of one document of each of a number of specified descriptions;
  - (c) require an employer to take specified steps to retain, copy or record the content of a document produced to him in accordance with the order; 40
  - (d) make provision which applies generally or only in specified circumstances;

- (e) make different provision for different circumstances.”
- (3) After subsection (6) insert –
- “(6A) Where an offence under this section is committed by a partnership each partner shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.” 5
- (4) At the end of the section add –
- “(9) Section 28(1) of the Immigration Act 1971 (c. 77) (extended time limit for prosecution) shall apply in relation to an offence under this section.
- (10) An offence under this section shall be treated as – 10
- (a) a relevant offence for the purpose of sections 28B and 28D of that Act (search, entry and arrest), and
- (b) an offence under Part III of that Act (criminal proceedings) for the purposes of sections 28E, 28G and 28H (search after arrest).
- (11) Subsections (5) to (9) of section 28A of that Act (arrest without warrant) shall apply to an offence under this section as they apply to an offence under section 26(1)(g) of that Act.” 15

## 116 Registration card

- (1) The following shall be inserted after section 26 of the Immigration Act 1971 (general offences) –
- “**26A Registration card** 20
- (1) In this section “registration card” means a document which –
- (a) carries information about a person (whether or not wholly or partly electronically), and
- (b) is issued by the Secretary of State to the person wholly or partly in connection with a claim for asylum (whether or not made by that person). 25
- (2) In subsection (1) “claim for asylum” has the meaning given by section 16 of the Nationality, Immigration and Asylum Act 2002.
- (3) A person commits an offence if he – 30
- (a) makes a false registration card,
- (b) alters a registration card with intent to deceive or to enable another to deceive,
- (c) has a false or altered registration card in his possession without reasonable excuse,
- (d) uses or attempts to use a false registration card for a purpose for which a registration card is issued, 35
- (e) uses or attempts to use an altered registration card with intent to deceive,
- (f) makes an article designed to be used in making a false registration card, 40
- (g) makes an article designed to be used in altering a registration card with intent to deceive or to enable another to deceive, or

- (h) has an article within paragraph (f) or (g) in his possession without reasonable excuse.
- (4) In subsection (3) “false registration card” means a document which is designed to appear to be a registration card.
- (5) A person who is guilty of an offence under subsection (3)(a), (b), (d), (e), (f) or (g) shall be liable – 5
- (a) on conviction on indictment, to imprisonment for a term not exceeding ten years, to a fine or to both, or
- (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both. 10
- (6) A person who is guilty of an offence under subsection (3)(c) or (h) shall be liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or 15
- (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.
- (7) The Secretary of State may by order –
- (a) amend the definition of “registration card” in subsection (1); 20
- (b) make consequential amendment of this section.
- (8) An order under subsection (7) –
- (a) must be made by statutory instrument, and
- (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.” 25

## 117 Immigration stamp

The following shall be inserted after section 26A of the Immigration Act 1971 (c. 77) (registration card: falsification, &c.) (inserted by section 116 above) –

### “26B Possession of immigration stamp

- (1) A person commits an offence if he has an immigration stamp in his possession without reasonable excuse. 30
- (2) A person commits an offence if he has a replica immigration stamp in his possession without reasonable excuse.
- (3) In this section –
- (a) “immigration stamp” means a device which is designed for the purpose of stamping documents in the exercise of an immigration function, 35
- (b) “replica immigration stamp” means a device which is designed for the purpose of stamping a document so that it appears to have been stamped in the exercise of an immigration function, and 40
- (c) “immigration function” means a function of an immigration officer or the Secretary of State under the Immigration Acts.
- (4) A person who is guilty of an offence under this section shall be liable –

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
- (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.”

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### 118 Sections 116 and 117: consequential amendments

- (1) The following shall be inserted after section 28A(9) of the Immigration Act 1971 (c. 77) (arrest without warrant) –

“(9A) A constable or immigration officer may arrest without warrant a person who has committed an offence under section 26A or 26B.”

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- (2) In section 28B(5) of that Act (search and arrest by warrant) for the words “, section 24A or section 25(2)” there shall be substituted the words “, 24A, 25(2), 26A or 26B”.

- (3) In section 28D(4) of that Act (search of premises) for the words “section 24A or section 25” there shall be substituted the words “24A, 25, 26A or 26B”.

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### *Procedure*

### 119 Power of entry

- (1) The following shall be inserted after section 28C of the Immigration Act 1971 (search and arrest without warrant) –

#### “28CA Business premises: entry to arrest

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- (1) A constable or immigration officer may enter and search any business premises for the purpose of arresting a person –

- (a) for an offence under section 24,
- (b) for an offence under section 24A, or
- (c) under paragraph 17 of Schedule 2.

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- (2) The power under subsection (1) may be exercised only –

- (a) to the extent that it is reasonably required for a purpose specified in subsection (1);
- (b) if the constable or immigration officer has reasonable grounds for believing that the person whom he is seeking is on the premises;
- (c) with the authority of the Secretary of State (in the case of an immigration officer) or a Chief Superintendent (in the case of a constable); and
- (d) if the constable or immigration officer produces identification showing his status.

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- (3) Authority for the purposes of subsection (2)(c) –

- (a) may be given on behalf of the Secretary of State only by a civil servant of the rank of at least Assistant Director, and
- (b) shall expire at the end of the period of seven days beginning with the day on which it is given.

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- 
- (4) Subsection (2)(d) applies –
- (a) whether or not a constable or immigration officer is asked to produce identification, but
  - (b) only where premises are occupied.
- (5) Subsection (6) applies where a constable or immigration officer – 5
- (a) enters premises in reliance on this section, and
  - (b) arrests a person on the premises.
- (6) A detainee custody officer may enter the premises for the purpose of carrying out a search.
- (7) In subsection (6) – 10
- “detainee custody officer” means a person in respect of whom a certificate of authorisation is in force under section 154 of the Immigration and Asylum Act 1999 (c. 33) (detained persons: escort and custody), and
  - “search” means a search under paragraph 2(1)(a) of Schedule 13 to that Act (escort arrangements: power to search detained person).” 15
- (2) The following shall be substituted for section 146(2) of the Immigration and Asylum Act 1999 (use of force) –
- “(2) A person exercising a power under any of the following may if necessary use reasonable force – 20
- (a) section 28CA of the 1971 Act (business premises: entry to arrest),
  - (b) section 141 or 142 of this Act, and
  - (c) regulations under section 144 of this Act.” 25

## 120 Power to search for evidence

The following shall be inserted after section 28F of the Immigration Act 1971 (c. 77)(entry and search) –

### “28FA Search for personnel records: warrant unnecessary

- (1) This section applies where – 30
- (a) a person has been arrested for an offence under section 24(1) or 24A(1),
  - (b) a person has been arrested under paragraph 17 of Schedule 2,
  - (c) a constable or immigration officer reasonably believes that a person is liable to arrest for an offence under section 24(1) or 24A(1), or 35
  - (d) a constable or immigration officer reasonably believes that a person is liable to arrest under paragraph 17 of Schedule 2.
- (2) A constable or immigration officer may search business premises where the arrest was made or where the person liable to arrest is if the constable or immigration officer reasonably believes – 40
- (a) that a person has committed an immigration employment offence in relation to the person arrested or liable to arrest, and

- (b) that employee records will be found on the premises which will be of substantial value (whether on their own or together with other material) in the investigation of the immigration employment offence.
- (3) A constable or officer searching premises under subsection (2) may seize and retain employee records which he reasonably suspects will be of substantial value (whether on their own or together with other material) in the investigation of – 5
- (a) an immigration employment offence, or
- (b) an offence under section 105 or 106 of the Immigration and Asylum Act 1999 (c. 33) (support for asylum-seeker: fraud). 10
- (4) The power under subsection (2) may be exercised only –
- (a) to the extent that it is reasonably required for the purpose of discovering employee records,
- (b) if the constable or immigration officer produces identification showing his status, and 15
- (c) if the constable or immigration officer reasonably believes that at least one of the conditions in subsection (5) applies.
- (5) Those conditions are –
- (a) that it is not practicable to communicate with a person entitled to grant access to the records, and 20
- (b) that access to the records will not be granted unless a warrant is produced.
- (6) Subsection (4)(b) applies –
- (a) whether or not a constable or immigration officer is asked to produce identification, but 25
- (b) only where premises are occupied.
- (7) In this section “immigration employment offence” means an offence under section 8 of the Asylum and Immigration Act 1996 (c. 49) (employment). 30

#### **28FB Search for personnel records: with warrant**

- (1) This section applies where on an application made by an immigration officer in respect of business premises a justice of the peace is satisfied that there are reasonable grounds for believing –
- (a) that an employer has provided inaccurate or incomplete information under section 105 of the Nationality, Immigration and Asylum Act 2002 (compulsory disclosure by employer), 35
- (b) that employee records, other than privileged records, will be found on the premises which will enable deduction of some or all of the information which the employer was required to provide, and 40
- (c) that at least one of the conditions in subsection (2) is satisfied.
- (2) Those conditions are –
- (a) that it is not practicable to communicate with a person entitled to grant access to the premises, 45
- (b) that it is not practicable to communicate with a person entitled to grant access to the records,



- (c) that entry to the premises or access to the records will not be granted unless a warrant is produced, and
  - (d) that the purpose of a search may be frustrated or seriously prejudiced unless an immigration officer arriving at the premises can secure immediate entry. 5
- (3) The justice of the peace may issue a warrant authorising an immigration officer to enter and search the premises.
- (4) In subsection (1)(b) “privileged records” means records which are –
  - (a) items subject to legal privilege,
  - (b) excluded material, or 10
  - (c) special procedure material.
- (5) Subsections (5) to (7) of section 28D shall have effect for the purposes of this section as they have effect for the purposes of that section.
- (6) An immigration officer searching premises under a warrant issued under this section may seize and retain employee records which he reasonably suspects will be of substantial value (whether on their own or together with other material) in the investigation of –
  - (a) an offence under section 108 of the Nationality, Immigration and Asylum Act 2002 (disclosure of information: offences) in respect of a requirement under section 105 of that Act, or 15
  - (b) an offence under section 105 or 106 of the Immigration and Asylum Act 1999 (c. 33) (support for asylum-seeker: fraud).” 20

## 121 Sections 119 and 120: supplemental

- The following shall be added at the end of section 28L of the Immigration Act 1971 (c. 77) (interpretation) (which becomes subsection (1)) – 25
- “(2) In this Part “business premises” means premises (or any part of premises) not used as a dwelling.
  - (3) In this Part “employee records” means records which show an employee’s –
    - (a) name, 30
    - (b) date of birth,
    - (c) address,
    - (d) length of service,
    - (e) rate of pay, or
    - (f) nationality or citizenship. 35
  - (4) The Secretary of State may by order amend section 28CA(3)(a) to reflect a change in nomenclature.
  - (5) An order under subsection (4) –
    - (a) must be made by statutory instrument, and
    - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.” 40

**122 Time limit on prosecution**

- (1) In section 28(1) of the Immigration Act 1971 (c. 77) (extended time limit for prosecution) the words “, 24A, 25” shall cease to have effect.
- (2) Section 24A(4) of that Act (deception: application of extended time limit) shall cease to have effect.

5

**PART 8**

## GENERAL

**123 Interpretation: “the Immigration Acts”**

- (1) A reference to “the Immigration Acts” is to –
  - (a) the Immigration Act 1971,
  - (b) the Immigration Act 1988 (c. 14),
  - (c) the Asylum and Immigration Appeals Act 1993 (c. 23),
  - (d) the Asylum and Immigration Act 1996 (c. 49),
  - (e) the Immigration and Asylum Act 1999 (c. 33), and
  - (f) this Act.
- (2) This section has effect in relation to a reference in this Act or any other enactment (including an enactment passed or made before this Act).

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**124 Applied provision**

- (1) Subsection (2) applies where this Act amends or refers to a provision which is applied by, under or for purposes of –
  - (a) another provision of the Act which contains the provision, or
  - (b) another Act.
- (2) The amendment or reference shall have effect in relation to the provision as applied.
- (3) Where this Act applies a provision of another Act, a reference to that provision in any enactment includes a reference to the provision as applied by this Act.

20

25

**125 Money**

- (1) *Expenditure of the Secretary of State or the Lord Chancellor in connection with a provision of this Act shall be paid out of money provided by Parliament.*
- (2) *An increase attributable to this Act in the amount payable out of money provided by Parliament under another enactment shall be paid out of money provided by Parliament.*
- (3) *A sum received by the Secretary of State or the Lord Chancellor in connection with a provision of this Act shall be paid into the Consolidated Fund.*

30

**126 Repeals**

The provisions listed in Schedule 7 are hereby repealed to the extent specified.

35

## 127 Commencement

- (1) Subject to subsections (2) to (5), the preceding provisions of this Act shall come into force in accordance with provision made by the Secretary of State by order.
- (2) The following provisions shall come into force on the passing of this Act—
  - (a) section 6, 5
  - (b) section 7,
  - (c) section 10(1) to (4) and (6),
  - (d) section 11,
  - (e) section 13 (and Schedule 2),
  - (f) section 34, 10
  - (g) section 36,
  - (h) section 37,
  - (i) section 38,
  - (j) section 42,
  - (k) section 43, 15
  - (l) section 44,
  - (m) section 49, and
  - (n) section 50.
- (3) Section 5 shall have effect in relation to—
  - (a) an application made after the passing of this Act, and 20
  - (b) an application made, but not determined, before the passing of this Act.
- (4) Section 8 shall have effect in relation to—
  - (a) an application made on or after a date appointed by the Secretary of State by order, and
  - (b) an application made, but not determined, before that date. 25
- (5) Section 9 shall have effect in relation to a child born on or after a date appointed by the Secretary of State by order.
- (6) An order under subsection (1) may—
  - (a) make provision generally or for a specified purpose only;
  - (b) make different provision for different purposes; 30
  - (c) include transitional provision;
  - (d) include savings;
  - (e) include consequential provision;
  - (f) include incidental provision.
- (7) An order under this section must be made by statutory instrument. 35

## 128 Extent

- (1) A provision of this Act which amends or repeals a provision of another Act has the same extent as the provision amended or repealed (ignoring extent by virtue of an Order in Council).
- (2) Sections 113 and 114 extend only to— 40
  - (a) England and Wales, and
  - (b) Northern Ireland.

- (3) A provision of this Act to which neither subsection (1) nor subsection (2) applies extends to—
- (a) England and Wales,
  - (b) Scotland, and
  - (c) Northern Ireland. 5
- (4) Her Majesty may by Order in Council direct that a provision of this Act is to extend, with or without modification, to—
- (a) any of the Channel Islands;
  - (b) the Isle of Man.
- (5) Subsection (4) does not apply in relation to the extension to a place of a provision which extends there by virtue of subsection (1). 10

**129 Short title**

This Act may be cited as the Nationality, Immigration and Asylum Act 2002.

## SCHEDULES

### SCHEDULE 1

Section 3

#### CITIZENSHIP CEREMONY, OATH AND PLEDGE

- 1 The following shall be substituted for section 42 of the British Nationality Act 1981 (c. 61) (registration and naturalisation: fee and oath) – 5
- “42 Registration and naturalisation: citizenship ceremony, oath and pledge**
- (1) A person of full age shall not be registered under this Act as a British citizen unless he has made the relevant citizenship oath and pledge specified in Schedule 5 at a citizenship ceremony. 10
- (2) A certificate of naturalisation as a British citizen shall not be granted under this Act to a person of full age unless he has made the relevant citizenship oath and pledge specified in Schedule 5 at a citizenship ceremony.
- (3) A person of full age shall not be registered under this Act as a British overseas territories citizen unless he has made the relevant citizenship oath and pledge specified in Schedule 5. 15
- (4) A certificate of naturalisation as a British overseas territories citizen shall not be granted under this Act to a person of full age unless he has made the relevant citizenship oath and pledge specified in Schedule 5. 20
- (5) A person of full age shall not be registered under this Act as a British Overseas citizen or a British subject unless he has made the relevant citizenship oath specified in Schedule 5.
- (6) Where the Secretary of State thinks it appropriate because of the special circumstances of a case he may – 25
- (a) disapply any of subsections (1) to (5), or
- (b) modify the effect of any of those subsections.
- (7) Sections 5 and 6 of the Oaths Act 1978 (c. 19) (affirmation) apply to a citizenship oath; and a reference in this Act to a citizenship oath includes a reference to a citizenship affirmation. 30
- 42A Registration and naturalisation: fee**
- (1) A person shall not be registered under a provision of this Act as a citizen of any description or as a British subject unless any fee payable by virtue of this Act in connection with the registration has been paid. 35

- (2) A certificate of naturalisation shall not be granted to a person under a provision of this Act unless any fee payable by virtue of this Act in connection with the grant of the certificate has been paid.

**42B Registration and naturalisation: timing**

- (1) A person who is registered under this Act as a citizen of any description or as a British subject shall be treated as having become a citizen or subject – 5
- (a) immediately on making the required citizenship oath and pledge in accordance with section 42, or
- (b) where the requirement for an oath and pledge is disapplied, immediately on registration. 10
- (2) A person granted a certificate of naturalisation under this Act as a citizen of any description shall be treated as having become a citizen – 15
- (a) immediately on making the required citizenship oath and pledge in accordance with section 42, or
- (b) where the requirement for an oath and pledge is disapplied, immediately on the grant of the certificate.
- (3) In the application of subsection (1) to registration as a British Overseas citizen or as a British subject the reference to the citizenship oath and pledge shall be taken as a reference to the citizenship oath.” 20
- 2 The following shall be substituted for Schedule 5 to the British Nationality Act 1981 (c. 61) –

“SCHEDULE 5

CITIZENSHIP OATH AND PLEDGE 25

- 1 The form of citizenship oath and pledge is as follows for registration of or naturalisation as a British citizen –

Oath

“I, [*name*], swear by Almighty God that, on becoming a British citizen, I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law.” 30

Pledge

“I will give my loyalty to the United Kingdom and respect its rights and freedoms. I will uphold its democratic values. I will observe its laws faithfully and fulfil my duties and obligations as a British citizen.” 35

- 2 The form of citizenship oath and pledge is as follows for registration of or naturalisation as a British overseas territories citizen – 40

Oath

“I, *[name]*, swear by Almighty God that, on becoming a British overseas territories citizen, I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law.”

5

Pledge

“I will give my loyalty to *[name of territory]* and respect its rights and freedoms. I will uphold its democratic values. I will observe its laws faithfully and fulfil my duties and obligations as a British overseas territories citizen.”

10

- 3 The form of citizenship oath is as follows for registration of a British Overseas citizen –

“I, *[name]*, swear by Almighty God that, on becoming a British Overseas citizen, I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law.”

15

- 4 The form of citizenship oath is as follows for registration of a British subject –

“I, *[name]*, swear by Almighty God that, on becoming a British subject, I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law.”

20

- 3 Section 41 of the British Nationality Act 1981 (c. 61) (regulations) shall be amended as follows.

25

- 4 For subsection (1)(d) substitute –

- “(d) for the time within which an obligation to make a citizenship oath and pledge at a citizenship ceremony must be satisfied;
- (da) for the time within which an obligation to make a citizenship oath must be satisfied;
- (db) for the content and conduct of a citizenship ceremony;
- (dc) for the administration and making of a citizenship oath or pledge;
- (dd) for the registration and certification of the making of a citizenship oath or pledge;
- (de) for the completion and grant of a certificate of registration or naturalisation;”.

30

35

- 5 In subsection (2)(c) –

- (a) for “the taking there of any oath of allegiance” substitute “the making there of a citizenship oath or pledge”, and
- (b) for “granted or taken” substitute “or granted”.

40

- 6 In subsection (3)(a) for “taking of oaths of allegiance” substitute “making of oaths and pledges of citizenship”.

- 7 After subsection (3) insert—
- “(3A) Regulations under subsection (1)(d) to (de) may, in particular—
- (a) enable the Secretary of State to designate or authorise a person to exercise a function (which may include a discretion) in connection with a citizenship ceremony or a citizenship oath or pledge; 5
  - (b) require, or enable the Secretary of State to require, a local authority to provide specified facilities and to make specified arrangements in connection with citizenship ceremonies;
  - (c) impose, or enable the Secretary of State to impose, a function (which may include a discretion) on a local authority or on a registrar. 10
- (3B) In subsection (3A)—
- “local authority” means—
- (a) in relation to England and Wales, a county council, a county borough council, a metropolitan district council, a London Borough Council and the Common Council of the City of London, and 15
  - (b) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39), and 20
- “registrar” means—
- (a) in relation to England and Wales, a superintendent registrar of births, deaths and marriages (or, in accordance with section 8 of the Registration Service Act 1953 (c. 37), a deputy superintendent registrar), and 25
  - (b) in relation to Scotland, a district registrar within the meaning of section 7(12) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49).” 30
- 8 *The Secretary of State may make a payment to a local authority in respect of anything done by the authority in accordance with regulations made by virtue of section 41(3A) of the British Nationality Act 1981 (c. 61).*
- 9 (1) A local authority must—
- (a) comply with a requirement imposed on it by regulations made by virtue of that section, and 35
  - (b) carry out a function imposed on it by regulations made by virtue of that section.
- (2) A local authority on which a requirement or function is imposed by regulations made by virtue of that section— 40
- (a) may provide facilities or make arrangements in addition to those which it is required to provide or make, and
  - (b) may make a charge for the provision of facilities or the making of arrangements under paragraph (a) which does not exceed the cost of providing the facilities or making the arrangements. 45



SCHEDULE 2

Section 13

NATIONALITY: REPEAL OF SPENT PROVISIONS

- 1 The following provisions of the British Nationality Act 1981 (c. 61) shall cease to have effect –
- (a) section 7 (registration as British citizen by virtue of residence or employment), 5
  - (b) section 8 (registration as British citizen by virtue of marriage),
  - (c) section 9 (registration as British citizen by virtue of father’s status),
  - (d) section 19 (registration as British Dependent Territories citizen by virtue of residence), 10
  - (e) section 20 (registration as British Dependent Territories citizen by virtue of marriage),
  - (f) section 21 (registration as British Dependent Territories citizen by virtue of father’s status),
  - (g) section 27(2) (entitlement of minor to registration as British Overseas citizen), 15
  - (h) section 28 (registration as British Overseas citizen by virtue of marriage), and
  - (i) section 33 (registration as British subject of certain women by virtue of earlier entitlement.) 20
- 2 Nothing in this Schedule has any effect in relation to a registration made under a provision before its repeal.

SCHEDULE 3

Section 59

IMMIGRATION AND ASYLUM APPEALS: ADJUDICATORS

- Term of office* 25
- 1 (1) An adjudicator –
- (a) may resign by notice in writing to the Lord Chancellor,
  - (b) shall cease to hold office on reaching the age of 70, and
  - (c) otherwise, shall hold and vacate office in accordance with the terms of his appointment. 30
- (2) Sub-paragraph (1)(b) is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (c. 8) (extension to age 75).

*Proceedings*

- 2 The Chief Adjudicator shall arrange for adjudicators to sit at times and places determined by the Lord Chancellor 35
- 3 The Chief Adjudicator may determine –
- (a) that a specified appeal shall be heard by more than one adjudicator;
  - (b) that appeals of a specified kind shall be heard by more than one adjudicator;

	(c) that proceedings of a specified kind in relation to an appeal shall be heard by more than one adjudicator.	
4	An adjudicator shall undertake duties allocated to him by the Chief Adjudicator.	
<i>Staff</i>		5
5	The Lord Chancellor may appoint staff for the adjudicators.	
<i>Money</i>		
6	<i>The Lord Chancellor must pay remuneration to –</i>	
	(a) <i>adjudicators;</i>	
	(b) <i>staff of the adjudicators.</i>	10
7	<i>The Lord Chancellor must defray expenses of the adjudicators.</i>	
8	<i>The Lord Chancellor may pay compensation to a person who ceases to be an adjudicator if the Lord Chancellor thinks it appropriate because of special circumstances.</i>	

## SCHEDULE 4

Section 78 15

## THE IMMIGRATION APPEAL TRIBUNAL

*Membership*

1	The Lord Chancellor shall appoint the members of the Tribunal.	
2	(1) A member –	
	(a) may resign by notice in writing to the Lord Chancellor,	20
	(b) shall cease to be a member on reaching the age of 70, and	
	(c) otherwise, shall hold and vacate office in accordance with the terms of his appointment.	
	(2) Sub-paragraph (1)(b) is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (c. 8) (extension to age 75).	25

*Presidency*

3	The Lord Chancellor shall appoint as President of the Tribunal a member who holds or has held high judicial office within the meaning of the Appellate Jurisdiction Act 1876 (c. 59).	
4	(1) The Lord Chancellor shall appoint one legally qualified member of the Tribunal as its Deputy President.	30
	(2) The Deputy President –	
	(a) shall act for the President if the President is unable to act or unavailable, and	
	(b) shall perform such functions as the President may delegate or assign to him.	35

*Proceedings*

- 5 The Tribunal shall sit at times and places determined by the Lord Chancellor.
- 6 The Tribunal may sit in more than one division.
- 7 (1) The jurisdiction of the Tribunal may be exercised by such number of its members as the President may direct. 5
- (2) A direction under this sub-paragraph –
- (a) may relate to specified proceedings or proceedings of a specified kind,
  - (b) may enable jurisdiction to be exercised by a single member, 10
  - (c) may require the member hearing proceedings, or a specified number of the members hearing proceedings, to be legally qualified, and
  - (d) may be varied or revoked by a further direction.

*Staff*

- 8 The Lord Chancellor may appoint staff for the Tribunal. 15

*Money*

- 9 *The Lord Chancellor must pay remuneration to –*
- (a) *members of the Tribunal;*
  - (b) *staff of the Tribunal.*
- 10 *The Lord Chancellor must defray expenses of the Tribunal.* 20
- 11 *The Lord Chancellor may pay compensation to a person who ceases to be a member of the Tribunal if the Lord Chancellor thinks it appropriate because of special circumstances.*

*Interpretation: legally qualified member*

- 12 For the purpose of this Schedule a member of the Tribunal is legally qualified if he – 25
- (a) has a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41),
  - (b) is an advocate or solicitor in Scotland of at least seven years' standing, 30
  - (c) is a member of the Bar of Northern Ireland, or a solicitor of the Supreme Court of Northern Ireland, of at least seven years' standing, or
  - (d) is appointed by the Lord Chancellor as a legally qualified member.

## SCHEDULE 5

Section 90

## IMMIGRATION AND ASYLUM APPEALS: TRANSITIONAL PROVISION

*“Commencement”*

- 1 In this Schedule “commencement” means the coming into force of Part 5 of this Act. 5

*Adjudicator*

- 2 Where a person is an adjudicator under section 57 of the Immigration and Asylum Act 1999 (c. 33) immediately before commencement his appointment shall have effect after commencement as if made under section 59 of this Act. 10

*Tribunal*

- 3 (1) Where a person is a member of the Immigration Appeal Tribunal immediately before commencement his appointment shall have effect after commencement as if made under Schedule 4.
- (2) Where a person is a member of staff of the Immigration Appeal Tribunal immediately before commencement his appointment shall have effect after commencement as if made under Schedule 4. 15

*Earlier appeal*

- 4 In the application of section 74—
- (a) a reference to an appeal or right of appeal under a provision of this Act includes a reference to an appeal or right of appeal under the Immigration and Asylum Act 1999, 20
- (b) a reference to a requirement imposed under this Act includes a reference to a requirement of a similar nature imposed under that Act, 25
- (c) a reference to a statement made in pursuance of a requirement imposed under a provision of this Act includes a reference to anything done in compliance with a requirement of a similar nature under that Act, and
- (d) a reference to notification by virtue of this Act includes a reference to notification by virtue of any other enactment. 30

*Saving*

- 5 (1) This Schedule is without prejudice to the power to include transitional provision in an order under section 127.
- (2) An order under that section may, in particular, provide for a reference to a provision of Part 5 of this Act to be treated as being or including a reference (with or without modification) to a provision of the Immigration and Asylum Act 1999. 35

SCHEDULE 6

Section 90

IMMIGRATION AND ASYLUM APPEALS: CONSEQUENTIAL AMENDMENTS

*Immigration Act 1971 (c. 77)*

- 1 In paragraph 2A(9) of Schedule 2 to the Immigration Act 1971 (control of entry: person with continuing leave) for “Part IV of the Immigration and Asylum Act 1999” substitute “Part 5 of the Nationality, Immigration and Asylum Act 2002 (immigration and asylum appeals)”. 5

*Special Immigration Appeals Commission Act 1997 (c. 68)*

- 2 For section 2(1) to (2) of the Special Immigration Appeals Commission Act 1997 (jurisdiction: appeals) substitute – 10
- “(1) A person may appeal to the Special Immigration Appeals Commission against an immigration decision if –
- (a) he would be able to appeal against the decision under section 60(1) of the Nationality, Immigration and Asylum Act 2002 but for a certificate of the Secretary of State under section 75(1) of that Act (national security, &c.), or 15
- (b) an appeal against the decision under section 60(1) of that Act lapsed under section 77 of that Act by virtue of a certificate of the Secretary of State under section 75(1) of that Act.”

- 3 The following shall be inserted after section 4 of that Act (determination of appeals) – 20

**“4A Matters to be considered**

- (1) This section applies to an appeal to the Commission against an immigration decision listed in section 60(2) of the Nationality, Immigration and Asylum Act 2002. 25
- (2) The Commission may consider evidence about any matter which it thinks relevant to the substance of the decision, including evidence which concerns a matter arising after the date of the decision.
- (3) But in relation to an appeal against refusal of entry clearance or refusal of a certificate of entitlement – 30
- (a) subsection (2) shall not apply, and
- (b) the Commission may consider only evidence which was available to the person who took the decision to refuse.”

*Anti-terrorism, Crime and Security Act 2001 (c. 24)*

- 4 The following shall be substituted for section 27(10) (grants) – 35
- “(10) The reference in section 87 of the Nationality, Immigration and Asylum Act 2002 (immigration and asylum appeal: grant to voluntary organisation) to persons who have rights of appeal under Part 5 of that Act shall be treated as including a reference to suspected international terrorists.”

## SCHEDULE 7

Section 126

## REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Immigration Act 1971 (c. 77)	In section 3(9)(b), the words “issued by or on behalf of the Government of the United Kingdom certifying that he has such a right of abode”.	5
	Section 7(1)(a). Section 24A(4). In section 28(1) the words “, 24A, 25”.	10
Race Relations Act 1976 (c. 74)	Section 19E(7). In section 71A(1), the words “(within the meaning of section 19D(1))”.	
British Nationality Act 1981 (c. 61)	In section 3(6), paragraph (c) and the word “and” immediately preceding it.	15
	Sections 7 to 9. In section 10 – in subsection (1), the words “, if a woman,” and in subsection (2), the words “if a woman,”.	20
	In section 17(6), paragraph (c) and the word “and” immediately preceding it.	
	Sections 19 to 21. In section 22 –	25
	in subsection (1), the words “, if a woman,” and in subsection (2), the words “if a woman,”.	
	Section 27(2). Section 28.	30
	Section 33. Section 44(2) and (3). Section 47.	
	In Schedule 1 – in paragraph 4(c), the words “and (e)”, and in paragraph 8(c), the words “and (e)”.	35
	In Schedule 2 – in paragraphs 1(1)(b) and 2(1)(b), the words “he is born legitimate and”, and in paragraph 3(1)(b), the words “had attained the age of ten but”.	40
	In Schedule 4 – in paragraph 2, in the second column of the Table, the entry relating to section 29(1) of the Immigration Act 1971, and paragraph 6.	45
British Nationality (Falkland Islands) Act 1983 (c. 6)	Section 4(3)(b).	
British Nationality (Hong Kong) Act 1990 (c. 34)	Section 1(5).	50
Asylum and Immigration Act 1996 (c. 49)	Section 5.	

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Immigration and Asylum Act 1999 (c. 33)	In section 10(1)(c), the words “(“the first directions”)” and “(“the other person”)”.	
	Section 15.	
	Section 29.	5
	Section 38(1) and (3).	
	Sections 44 to 52.	
	Section 53(5).	
	Section 55.	
	Sections 56 to 81.	10
	Section 94(5).	
	Section 96(4) to (6).	
	In section 147, the definition of “detention centre”.	
	Section 166(4)(e).	15
	Schedules 2 to 4.	
	In Schedule 8, paragraph 2.	
	In Schedule 14, paragraphs 46(a), 51, 53 and 119.	
Race Relations (Amendment) Act 2000 (c. 34)	In Schedule 2, paragraphs 32 to 40.	20





# Nationality, Immigration and Asylum Bill

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## B I L L

To make provision about nationality, immigration and asylum; to create offences in connection with international traffic in prostitution; to make provision about international projects connected with migration; and for connected purposes.

*Presented by Mr Secretary Blunkett  
supported by  
The Prime Minister, Mr Secretary Prescott,  
Mr Chancellor of the Exchequer,  
Mr Secretary Straw, Mr Secretary Reid,  
Mr Secretary Murphy and Angela Eagle.*

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*Ordered, by The House of Commons,  
to be Printed, 12th April 2002.*

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