

EXPLANATORY NOTES

Border Security, Asylum and Immigration Act 2025

Chapter 31

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BORDER SECURITY, ASYLUM AND IMMIGRATION ACT 2025

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Border Security, Asylum and Immigration Act 2025 which received Royal Assent on 2 December 2025 (c. 31).

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

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Overview of the Act

1 The Act establishes the architecture and provides the tools, powers and offences to transform the cross-system response to the threats against UK border security and strengthens the operation of the border security, asylum and immigration systems.

2 The purpose of the Act is to improve UK border security and strengthen the asylum and immigration system by creating a framework of new and enhanced powers and offences that, when taken together, reinforce, enhance and connect capabilities across the relevant government and law enforcement partners which make up the UK's border security, asylum and immigration systems.

3 While the measures within the Act enable a response to the range of current and future threats to the UK border, the intention in the immediate term is to support the Border Security Command's focus on preventing, investigating and prosecuting Organised Immigration Crime (OIC), providing additional deterrents and penalties for criminals involved in such activity. The Act will:

   a. enable smarter, faster and more effective interventions to protect UK border security;

   b. make it easier to detect, disrupt and deter those seeking to engage in and benefit from OIC, limiting the permissible environment and its impact; and

   c. improve understanding of how and why OIC happens.

4 The Act includes the following measures:

   a. Sections 1 to 12 set out provisions to make the Border Security Commander a Statutory Office Holder and details their functions in this role.

   b. Sections 13 to 20 set out new offences in relation to the preparatory acts to commit an immigration offence and the offence covering those who advertise unlawful immigration services.

   c. Section 21 details the offence of endangering another during sea crossing to the United Kingdom.

   d. Sections 22 to 29 set out the powers for an immigration officer, NCA officer, or police constable to search, seize and retain information stored on electronic devices.

   e. Sections 30 to 36 relate to the sharing of customs information by His Majesty's Revenue and Customs (HMRC) and the sharing of trailer registration information to assist with Home Office functions.

   f. Sections 37 and 38 set out provisions relating to the provision of biometric information outside of a visa application process and the use and retention of that information.

   g. Section 39 sets out the powers in ports in Scotland to take fingerprints.

   h. Sections 40 to 42 set out the repeal of immigration legislation in relation to certain sections of the Illegal Migration Act 2023 and the entirety of the Safety of Rwanda (Asylum and Immigration Act) 2024.

   i. Section 43 sets out new powers in relation to the Immigration Services Commissioner.

j. Section 44 sets out changes to the power to detain a person ahead of deportation.

k. Section 45 sets out provision relating to the rights of European Union (EU), other European Economic Area and Swiss nationals, and their family members, with leave to enter or remain in the UK granted under the EU Settlement Scheme.

l. Section 46 sets out provisions to strengthen the powers available to protect the public from migrants that pose a threat through placing additional conditions on them.

m. Section 47 sets out new powers in relation to the taking of biometric information.

n. Section 48 sets out changes to extend the scope of employers required to carry out right to work checks to prevent illegal working and the associated sanctions for non-compliance.

o. Sections 49 and 50 set out changes to the timelines for appeals for non-detained individuals convicted of an offence and is liable to deportation, and those receiving accommodation support.

p. Section 51 redefines the UK's interpretation of a 'particularly serious crime' for the purposes of excluding refugees from the protection against refoulement, in line with Article 33(2) of the Refugee Convention

q. Sections 52 to 54 set out a new offence in relation to the articles used in Serious Organised Crime.

r. Sections 55 to 59 set out amendments to Serious Crime Prevention Orders and the introduction of Interim Serious Crime Prevention Orders.

s. Section 60 sets out the validation of fees charged in relation to the recognition of professional qualifications.

Policy background

5 Across the world, migration is increasing as individuals seek to escape war, poverty, or natural disasters. Whilst illegal migration is a truly global issue, a significant number of migrants are using dangerous routes to illegally access mainland Europe, a growing number of whom are then continuing to the United Kingdom.

6 The government is determined to tackle this issue and secure the UK border by restoring order, control, fairness and public confidence in the system. We will build a modern, effective and properly functioning immigration and asylum system which will protect those fleeing from danger whilst promptly processing and returning those with no right to remain. The Government believes that a step change in the scale of the response to these cross-system threats is needed urgently: the response needs to get ahead of the evolving, inter-connected threats faced.

7 In the United Kingdom, there have been an increased numbers of individuals presenting at or seeking to cross the border illegally through a variety of different routes.

8 There are a range of methods that individuals use to enter and/ or remain in the United Kingdom without the correct permission, including crossing the English Channel or overstaying visas.

9 Criminal gangs are exploiting the significant demand for their services for profit, smuggling people and goods across the UK border. With their criminal networks spanning multiple countries and regions, many OCGs base their operations in mainland Europe rather than the UK to avoid detection by UK authorities.

10 Whilst small boats crossing the English Channel are currently the most prevalent method for entering the UK illegally, other methods include clandestine entry, inadequately documented air arrivals and abuse of legal routes. Whilst migrants can become irregular once in the UK e.g. if they overstay their visa. there have been several cases of individuals using other routes which are equally as dangerous as small boats, including the tragedy at Purfleet which resulted in the deaths of 39 Vietnamese migrants in a refrigerated trailer.

Statistics

11 The number of irregular migrants arriving in the UK peaked at 54,574 arrivals in 2022, with a further 36,363 arrivals in 2023. In the year ending September 2025, there were 51,249 detected irregular arrivals, 89% of these arrived by small boats[1].

12 Small boats have been the predominant recorded method of entry for irregular arrivals since 2020, when detections on this method increased rapidly and detections on other methods declined.

13 In the year ending September 2025, 45,659 migrants arrived in the UK on 775 small boats. This increased from 29,851 migrants on 575 boats in the year ending September 2024. The average number of people per boat has increased, from an average of 41 people per boat in 2022 to 59 in the year ending September 2025 . The high number of people per boat only serves to increase the danger of these crossings.[2]

14 In the year ending September 2025, less than one fifth of detected irregular arrivals consisted of Inadequately documented air arrivals (6%), Recorded detections in the UK (4%) and Recorded detections at UK ports (0.4%).[3]

15 Between 2015 and September 2025 the UK offered refuge to over three quarters of a million (811,883) people, through safe and legal routes, including those from Hong Kong, Syria, Afghanistan and Ukraine, as well as family members of refugees.[4]

16 The Government recognises this increase in all arrivals has put strain not only on the UK's immigration and asylum system, but also on local authorities who seek to house and care for individuals and provide services to the public. Global instability, coupled with fewer asylum decisions being made have contributed towards the total number of cases in the asylum system standing at 224,742 at the end of June 2024. This is a four-fold increase over the last decade, with 55,814 cases in June 2014.[5]

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[1] Irregular arrivals Irregular arrivals https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-september-2025/how-many-people-come-to-the-uk-irregularly?

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

[3] Irregular arrivals https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-september-2025/how-many-people-come-to-the-uk-irregularly?

[4] Immigration system statistics data tables - GOV.UK - https://www.gov.uk/government/statistical-data-sets/immigration-system-statistics-data-tables#safe-and-legal-humanitarian-routes-to-the-uk

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

17 The increase in irregular arrivals has been driven by global instability and capitalised on by organised criminal gangs operating smuggling networks across Europe, many of which also have links to the smuggling of illicit and illegal goods.

18 Threats to the UK from serious and organised crime, including organised immigration crime are rapidly evolving. Serious and organised crime is estimated to cost the UK at least £47 billion annually.[6,7]

19 For example, in 2023, there were 25 cases involving the seizure of 3D-printed firearm component parts, or items associated with 3D-printing of firearms (such as printers or blueprints) during targeted police searches. This is an increase on 17 cases in 2022. Five of the cases in 2023 involved the seizure of a complete firearm, with only one of these confirmed through testing as a viable 3D-printed firearm. In the remaining 20 cases, only 3D-printed parts were recovered.[8]

20 In 2020, Police Scotland recovered pill presses from an organised crime group used to produce Etizolam, a Class C drug which in the same year was a factor in more than 800 drug-related deaths in Scotland.[9] NCA Lead Investigator Rory Duffin said: "The NCA investigation found Sorrenti was providing criminals with professional-standard customer service, supplying equipment, ingredients and instructions to create hundreds of thousands of potentially fatal drugs, and troubleshooting problems that arose.".

21 The Government believes that it is vital that the approach to border security also addresses the wide range of serious and organised criminality threats faced by the public.

Border Security

22 The Government views the United Kingdom's border as a vital strategic asset, protecting the public from international threats, enforcing domestic laws and underpinning legitimate systems to enable citizens to go about their lives freely and confidently.

23 The Border Security Command (BSC), headed by the Border Security Commander, is leading the required step change in the UK's approach to border security. In addition to leading the UK's strategic and operational response to small boats, the Command provides a clear and long-term vision for border security, bringing together and providing leadership to all parts of the system that work to maintain the integrity of the border and immigration systems, domestically and internationally.

24 With the collective agreement of the Home Secretary and Prime Minister, the Border Security Commander will set the government's strategic priorities for border security. The BSC will work closely with other government departments, including HMRC and the Foreign, Commonwealth and Development Office (FCDO), as well as operational partners, including

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

[7] CP 992 – No Place to Hide: Serious and Organised Crime Strategy 2023-2028 (publishing.service.gov.uk) https://assets.publishing.service.gov.uk/media/65798633254aaa0010050bdc/SOC_Strategy_23-28_V9_Web_Accessible.pdf

[8] NSA 2024 - Firearms - National Crime Agency

[9] Businessman who gave drug suppliers "professional customer service" is jailed - National Crime Agency

Border Force, the National Crime Agency (NCA), Immigration Enforcement and policing, to deliver on those priorities. This will ensure that the full range of capabilities, including that of the UK intelligence community, are maximised and brought to bear on those exploiting the UK border.

25 The BSC's first priority is tackling OIC and reducing illegal migration to the UK. While the techniques used by OCGs to facilitate illegal migration are growing increasingly sophisticated, the demand for their services also continues to rise in response to global instabilities, ranging from conflict to climate and economic factors.

26 The Border Security Command is providing a new approach, which considers the end-to-end process of OIC, targeting each stage to make facilitation unviable and prevent OCGs from operating. The new approach to tackling OIC aims to:

- **Prevent**: disincentivise migrants and deter OCGs from participating in OIC.
- **Pursue**: disrupt OCGs and their criminal activity.
- **Protect**: detect and act on OIC at the border.
- **Prepare**: manage, learn from and adapt the UK's response to tackling OIC.

Organised Immigration Crime

27 Over several years, the threat from OIC has developed, with organised crime networks operating across multiple countries as supply chain networks have become more advanced. The Government has assessed the impact that these criminal enterprises have had on a variety of aspects of public life, not least the smuggling of individuals across the UK border.

28 This Act aims to deter and penalise those involved in organised crime, with new powers to disrupt those responsible for facilitating illegal migration. It aims to ensure a greater intelligence picture is available to law enforcement, with powers to enable agencies to share crucial data with law enforcement to build a more comprehensive picture on the activities of those suspected of carrying out OIC. The ability to seize and search electronic devices is intended to help law enforcement to identify those facilitating dangerous routes to the UK.

Powers and Offences

29 Providing law enforcement with the tools to disrupt OIC is a key priority for this Act. The legislation introduces new enhanced powers to tackle, investigate and prosecute OIC, and provide additional deterrents and penalties for criminals involved in OIC. The interventions aim to strengthen the UK's border security beyond OIC, with additional powers for law enforcement and the justice system to prevent other individuals and groups involved in serious and organised crime from harming the UK.

30 The Act contains new measures aimed at disrupting the networks of criminals by targeting their operations and introducing a new offence relating to the handling of articles for use in OIC and a new offence relating to the research or planning of an OIC offence. These measures will target the activities of facilitators and OCGs who look to profit from OIC. Alongside this, new powers of search, seizure, retention and extraction will be introduced for, Immigration Officers, NCA Officers and/or a police constable where there are reasonable grounds to suspect that a person, who is in the relevant "cohort" of people has an electronic device that contains information or evidence relevant to facilitation offences under section 25 or 25A of the IA 1971. This seeks to enable law enforcement to obtain an enhanced intelligence picture on OCG activity and help to provide clear strategic direction on how to mitigate against illegal means of travel.

31 Online platforms are exploited at scale to promote unlawful immigration services, such as small boat crossings and provision of fraudulent travel documents, allowing organised crime groups to generate profits at the expense of vulnerable and misinformed migrants. Through the new measures, the Government seeks to address the exploitation of social media by providing law enforcement with an additional tool to prosecute those who create or publish (or cause the creation of or publication of) material whose purpose is or effect will be to promote an unlawful immigration service. The exploitation of the online environment by organised crime groups for promoting their services is widely known and discussed within the public domain, including published academic research, such as teaching notes, blogs or other academic publications that academics routinely publish, and journalistic content. This type of discussion and material subsequently generated is clearly not of concern which is why the Government has sought to ensure that there are express defences in place for journalistic content and published academic research. Additionally, there are intermediary liability protections in place for online platforms, including social media platforms, to emphasise the focus is on those who are creating and publishing content promoting unlawful immigration services.

32 As dangerous small boat crossings continue in the English Channel, the tragic loss of life continues to rise. The Government seeks to address the actions and behaviours of those who put others in serious danger. This legislation seeks to enable the prosecution of individuals who cause or place any other person at risk of death or serious injury whilst attempting to enter the UK unlawfully via a journey by water from France, Belgium or the Netherlands.

33 Where a foreign national poses a threat to the public but cannot be removed from the UK because of our obligations under domestic and international law, they are granted permission to stay. Currently law enforcement does not have the ability to impose the same conditions which can be imposed on a person on immigration bail, irrespective of the threat posed by the person. Provisions in this Act strengthen the powers available to protect the public from migrants that pose a threat. Decisions to impose these conditions will be taken on a case-by-case basis and subject to an ECHR proportionality analysis. Curfews, inclusion zones and exclusion zones will only be imposed in cases where electronic monitoring is not sufficient to mitigate the threat posed by the person. The powers will only be used in cases involving conduct such as war crimes, crimes against humanity, extremism, serious crime or where the person poses a threat to national security or public safety.

Non-legislative programme

34 The BSC will continue to drive change beyond these legislative measures set out in the Act. It will seek out non-legislative reforms to better support law enforcement and wider partners to understand, identify and tackle OIC. Money laundering underpins and enables most forms of organised crime, allowing OCGs to further their operations and conceal their assets. The BSC will therefore seek to establish closer working relationships with the banking sector to prevent the flow of illicit finance and degrade the profits of OCGs facilitating illegal migration.

35 The BSC will redirect money previously earmarked for the Migration and Economic Development Partnership to support law enforcement in their efforts to tackle OIC, ensuring they are equipped to say ahead of the threat. The BSC will seek to identify and share best practice across policing, support the consistent sharing of intelligence and proactively consider emerging policy options and levers most likely to achieve the greatest disruptive effect against the OCGs facilitating OIC.

36 This Government is determined to tackle the threat of OIC, and is working closely with international partners to develop strategic solutions to tackle the problem from route to source. The Government will expand overseas networks, deploying additional officers to build relationships, develop capabilities where needed and collaborate operationally with individual transit countries, countries of origin and partner countries, as well as multilaterally. The BSC is leading the system to:

a. Work with the EU and EU Member States to improve and strengthen legislative responses to Organised Immigration Crime, ensuring legislation in this area addresses the range of destinations and transit routes being used and the breadth of criminal activity people smugglers are involved in;

b. Ensure the UK plays its part in Europol with more dedicated resource and capability, including through an uplifted UK presence;

c. Deepen operational cooperation with the EU on Organised Immigration Crime as part of a wider UK-EU reset, including access to real-time intelligence and enhanced cooperation between policing teams;

d. Demonstrate leadership and creativity in enforcement responses to Organised Immigration Crime, including with European partners (e.g. through Calais Group, new UK led Organised Immigration Crime international fora, G7, G20 etc); and

e. Encourage greater action from transit and countries of origin, working with the EU and international partners to deliver the required change.

Data Sharing

37 As organised criminality evolves, it is crucial that law enforcement have the most relevant intelligence available to them in order to detect and disrupt criminal gangs. It is important that the government utilises the data available to be able to detect this criminality and keep citizens safe.

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

Serious and Organised Crime and other threats

39 The UK border is both a vulnerability and a critical intervention point for serious and organised crime (SOC). Many OCGs are engaged in polycriminality, meaning that those involved in one form of SOC e.g. OIC are often found involved in others, such as drugs trafficking.

40 Serious and organised crime often drives local-level criminal activity, as the distribution of illegal drugs and firearms contributes significantly to violence and disorder within communities. By disrupting the articles and networks that enable these criminal activities, the measures in this Bill help reduce the broader societal harm caused by serious and organised crime. This proactive stance in intercepting the possession and supply of crime-facilitating articles supports the government's mission of making UK neighbourhoods safer and decreasing crime rates on the streets.

41 Alongside these measures relating to the possession and supply of articles used in Serious and Organised Crime, this Act will also strengthen the Serious Crime Prevention Order regime introduced in the Serious Crime Act 2007, to further prevent and disrupt the operations of these groups including those who seek to carry out immigration offences. The introduction of Interim Serious Crime Prevention Orders will ensure law enforcement partners can take immediate action in the absence of a conviction to prevent criminal activity before it occurs.

42 The Act also amends the counter-terrorism port powers (Schedule 7 to the Terrorism Act 2000 and Schedule 3 to the Counter-Terrorism and Border Security Act 2019) to allow the police to take DNA samples and fingerprints (biometrics) at a port in Scotland, bringing Scotland into alignment with the position across England, Wales, and Northern Ireland.

The Illegal Migration Act 2023

43 The Illegal Migration Act 2023 sought to create a system in which anyone arriving illegally in the UK would not have their asylum claim, human rights claim, or modern slavery referral considered while they are in the UK, but they would instead have been removed either to their home country, subject to a safe returns assessment, or to a safe third country to have their protection claims processed there.

44 A small number of provisions of the Illegal Migration Act 2023 were commenced. This Act repeals provisions in the Illegal Migration Act, including the duty to remove and its associated provisions. The Act removes the following provisions from the statute book:

- Sections 1 to 6 and Schedule 1;
- Sections 7 to 11;
- Sections 13 to 15 and Schedule 2;
- Sections 16 to 28;
- Sections 30 to 51;
- Sections 53 to 58; and
- Sections 61 and 66.

45 Some provisions have been retained either in their current form or with amendment where operational benefit exists. These are:

- section 12;
- section 29;
- section 52;
- section 59;
- section 60;
- section 62;
- sections 63 to 65, and
- sections 67 to 69.

The Safety of Rwanda (Asylum and Immigration) Act 2024

46 The Safety of Rwanda Act (Asylum and Immigration) Act 2024 ('the Safety of Rwanda Act') was introduced following the Supreme Court judgment in R (on the application of) AAA and others v Secretary of State for the Home Department [2023] UKSC 42 on 15 November 2023. That judgement concluded that the Migration and Economic Development Partnership (MEDP) into which the previous government had entered with the Republic of Rwanda and under which individuals who entered the UK via dangerous, illegal or unnecessary means would be relocated to Rwanda for asylum processing, was unlawful.

47 In response to this judgement, the previous government agreed the UK-Rwanda Treaty, which replaced the commitments agreed under the previous Memorandum of Understanding that had been considered by the Courts. The Treaty was laid in Parliament on 6 December 2023. The Safety of Rwanda Act received Royal Assent and came into force when the Treaty came into force on 25 April 2024.

48 The Safety of Rwanda Act:

a. Confirms that the Republic of Rwanda is a safe third country for the purposes of removal;

b. Confirms that the Government of the Republic of Rwanda will fulfil its obligations under the Treaty with the UK;

c. Ensures that any court or tribunal conclusively treats Rwanda as a safe for the purposes of asylum and removal.

49 No enforced removals to Rwanda ever took place under the terms of the UK-Rwanda Treaty. As the government does not intend to proceed with the MEDP, the Safety of Rwanda Act will serve no practical purpose. The Government intends to formally bring an end to the Treaty with Rwanda. This will deliver on the Government's manifesto commitment to end the MEDP.

Legal background

50 The Act amends the following legislation:

a. the Immigration Act 1971

b. the Immigration and Asylum Act 1999

c. the British Nationality Act 1981

d. the Terrorism Act 2000

e. the Criminal Justice and Police Act 2001

f. the Nationality, Immigration and Asylum Act 2002

g. the Proceeds of Crime Act 2002

h. the Serious Crime Act 2007

i. the UK Borders Act 2007

j. the Immigration Act 2016

k. the Data Protection Act 2018

l. the Counter-Terrorism and Border Security Act 2019

m. the Illegal Migration Act 2023

n. the Immigration (European Economic Area) Regulations 2016 (S.I. 2016/1052)

o. the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 (S.I. 2020/61)

p. the Immigration (Collection, Use and Retention of Biometric Information and Related Amendments) Regulations 2021 (S.I. 2021/772).

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

Territorial extent and application

52 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

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

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

a. Supply of trailer registration information (sections 33-36) will engage the LCM process in Northern Ireland.

b. Offences relating to things for use in serious crime (sections 52-54) will engage the LCM process in Scotland and Northern Ireland.

c. Measures relating to the breach of an Interim Serious Crime Prevention Order in non-terrorism cases (section 56) will engage the LCM process in Scotland and Northern Ireland.

d. Validation of fees charged in relation to qualifications (section 60) will engage the LCM process in Wales, Scotland and Northern Ireland.

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

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

a. Section 41(1)(a) so far as it repeals section 4(7) to (10) of the Illegal Migration Act 2023 as it extends to the Channel Islands and the Isle of Man and the British Overseas Territories.

b. Section 41(1)(e) so far as it repeals section 31 to 37 of that Act.

c. Section 42(2).

56 By Order in Council, the provisions of this Act except sections 1 to 12, 27, 30 to 36, 39 to 42 and 45 and Part 3 may be extended to any of the Channel Islands or the Isle of Man.

Commentary on provisions of the Act

Part 1: Border Security

Chapter 1: The Border Security Commander

Section 1: The Border Security Commander

57 This section makes provision for the Border Security Commander ("the Commander") to be a statutory office holder.

58 Subsection (1) requires the Secretary of State to designate a civil servant as the Commander.

59 Subsection (2) ensures that the Commander is to carry out the functions of the statutory office on behalf of the Crown, and subsection (3) ensures that service as the Commander is in the civil service of the State.

60 To enable the Commander to perform their functions, subsection (4) requires the Home Secretary to provide civil servants or other persons to give appropriate assistance to the Commander.

Section 2: Terms and conditions of designation etc

61 This section makes provision about the terms and conditions of designation.

62 Subsection (1) requires the Commander to hold and vacate office in accordance with the terms and conditions of designation. This is subject to subsections (3) to (5). Subsection (2) provides that such terms and conditions are to be determined by the Secretary of State.

63 Subsection (3) provides that the Secretary of State may also terminate the designation of the Commander in the interests of efficiency or effectiveness, or by reason of misconduct, or of any failure by the Commander to comply with the terms and conditions of the designation.

64 Subsection (4) requires that, before terminating the designation of the Commander, the Secretary of State must: write to the Commander setting out his or her reasons; give the Commander the opportunity to make written representations; and consider any such representations made by the Commander. In the event of any decision to terminate, termination may be immediate or may be following period of time determined by the Secretary of State.

Section 3: Functions of the Commander

65 This section makes provision for the functions of the Commander.

66 Subsection (1) requires the Commander to have regard to the objectives of a) maximising the effectiveness of the activities of partner authorities relating to threats to border security, for the purpose of minimising such threats; and b) maximising the coordination of those activities for that purpose.

67 Subsection (2) requires the Commander to issue a strategic priority document from time to time. The document must include the principal threats to border security, as viewed by the Commander at the time the document is issued. The document must also set out the strategic priorities to which partner authorities should have regard in exercising their functions in relation to any of the principal threats identified in the strategic priority document.

68 In exercising its functions in relation to threats to border security, a partner authority must have regard to the strategic priority document (subsection (3)).

69 Subsection (4) provides that, before issuing a strategic priority document, the Commander must: consult the Board at a meeting of the Board; and obtain the consent of the Secretary of State to issue the document.

70 Subsection (5) sets out definitions of "border security", "partner authority" and "public authority". Subsection (6) also outlines the exclusion from the definition of "partner authority" (and therefore in relation to obligations on partner authorities) for (a) the Security Service, (b) the Secret Intelligence Service, and (c) the Government Communications Headquarters. (See also subsections (3) and (4) of section 5 in relation to those bodies.)

71 Subsection (7) provides that, for the purpose of this Bill but subject to subsection (9), threats to border security include the passage or conveyance of any person or thing towards, into or out of the United Kingdom, or the organisation of or preparation for such passage or conveyance, in circumstances mentioned in subsection (8).

72 Subsection (8) identifies the circumstances where the passage, conveyance, organisation or preparation as referred to in subsection (7): (a) constitutes an offence under the law of any part of the United Kingdom; (b) creates a risk of the commission of an offence under the law of any part of the United Kingdom; or (c) threatens harm of any kind to persons or property in the United Kingdom.

73 Subsection (9) provides that, for the purpose of this Act, threats to border security do not include threats relating to a customs revenue matter as defined in section 7(2) of the Borders, Citizenship and Immigration Act 2009.

Section 4: Duty to prepare annual reports

74 This section makes provision in respect of the Commander's annual report.

75 Subsections (1) and (2) place a duty on the Commander to prepare an annual report on the exercise of the Commander's functions during the previous financial year (defined in subsection (5)) , which must also include the Commander's views on the performance of the border security system (as defined in subsection (5)) with particular reference to any strategic priorities identified by the Commander in a strategic priority document issued under section 3.

76 Subsection (3) requires the Commander to send a copy of the annual report to the Secretary of State.

77 Subsection (4) requires the Secretary of State to lay the annual report before Parliament and arrange for it to be published. In practice, publication will be in a manner which the Secretary of State considers appropriate.

Section 5: Duties of cooperation etc

78 This section provides that a partner authority has a duty, so far as appropriate and reasonably practicable, to cooperate with the Commander in the carrying out of the Commander's functions (subsection (1)).

79 The duty of cooperation extends only so far as the cooperation is compatible with the exercise of the partner authority's other functions (subsection (2)).

80 Subsections (3) and (4) require the Commander, the Director General of the Security Service, the Chief of the Secret Intelligence Service and the Director of GCHQ, to put in place arrangements governing cooperation between the Commander and those persons in support of the Commander's functions.

Section 6: The Board

81 This section provides for a Board and its membership.

82 Subsection (1) places a duty on the Commander to establish and maintain a Board to assist the Commander in the exercise of the Commander's functions.

83 Subsection (2) requires that board (referred to in Chapter 1 of Part 1 of this Act as 'the Board') to operate under the name which is specified from time to time by the Commander.

84 Subsection (3) requires a) the Commander to be the chair of the Board; and b) one or more representatives nominated by each partner authority which the Commander has for the time being determined should nominate one or more representatives to the Board (see also subsection (4)).

85 Subsection (5) allows the Commander to invite any public authority than a partner authority to nominate one or more representatives of that authority to attend a particular meeting of the Board.

86 Subsection (6) requires the Commander to hold meetings of the Board at such intervals as the Commander thinks appropriate.

87 Subsection (7) provides that, where a person is required to nominate a representative as a member of the Board, the person (a) must take reasonable steps to ensure that the representative attends meetings of the Board; and (b) may, if the representative is unable to attend a particular meeting, arrange for another representative of that person to attend as a member of the Board in that representative's place.

Section 7: Delegation by the Commander

88 This section makes provision about the delegation of the Commander's functions.

89 Subsection (1) allows the Commander to delegate the functions conferred on the Commander under the Bill to be exercisable by any civil servant authorised by the Commander.

90 Subsection (2) ensures that a function of the Commander may be delegated entirely or subject to limitations or conditions.

91 Subsection (3) gives the Commander the power to limit the duration of a delegation as well as to vary or revoke the delegation at any time. It also reserves the right of the Commander to continue to exercise a function that has been delegated.

92 Subsection (4) provides that any act or omission by a person in exercising a function of the Commander delegated to them under subsection (2) is to be treated as being done or omitted to be done by the Commander.

Section 8: Designation of an Interim Border Security Commander

93 This section makes provision for the designation of an Interim Border Security Commander.

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

95 Subsection (2) provides that the Secretary of State may designate a civil servant as the Interim Border Security Commander to exercise the functions of the Commander under this Act for such period as the Secretary of State thinks appropriate.

96 Subsection (3) identifies that that period may not be longer than the period for which no Commander is designated or (as the case may be) the Commander is incapacitated or unavailable.

97 Subsection (4) provides that, while a designation under this section has effect, references in this Act (other than in this section) or in any other enactment or instrument to the Commander include a reference to the Interim Border Security Commander.

98 Subsection (5) provides that an individual is not prevented from being designated as the Commander merely because they have previously been designated as the Interim Border Security Commander.

Section 9: Directions and guidance by the Secretary of State

99 This section makes provision about directions and guidance of the Secretary of State to the Commander.

100 Subsection (1) requires the Commander to comply with directions given by the Secretary of State about the exercise of the Commander's functions under this Act, and to have regard to guidance issued by the Secretary of State about the exercise of those functions (subsection (2)).

101 Subsection (3) provides that directions and guidance under this section may be revised or withdrawn from time to time.

Section 10: Exclusion of application to the armed forces

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

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

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

Section 12: Interpretation

104 This section provides definitions of terms used in Chapter 1 of the Act.

Chapter 2: Other Border Security Provision
Offences relating to articles or information for use in immigration crime

Section 13: Supplying articles for use in immigration crime

105 Subsection (1) provides that a person commits an offence if:

a. they supply or offer to supply a relevant item to another person, and

b. at the time they do so, they know or suspect that the item is to be used by any person in connection with an offence under section 24 or 25 of the Immigration Act 1971 (respectively, illegal entry etc and assisting unlawful immigration).

106 Subsection (2) ensures that liability extends beyond those who directly supply such items, to include anyone "concerned in" those activities, for example, individuals who arrange, facilitate, finance, or otherwise assist in the supply or movement of such articles, knowing they are to be used in connection with an offence under sections 24 or 25 of the Immigration Act 1971.

107 Subsection (3) sets out that is it as a defence to show that they had a reasonable excuse for the action in subsection (1).

108 Subsection (4) outlines that a person has such reasonable excuse in situations including, but not limited to, where they are taking action to carry out a rescue of someone from danger or serious harm, or where their action is on behalf of an organisation that aims to assist asylum-seekers and does not charge for its services.

109 Subsection (5) outlines that a person is to be treated as showing that they have a reasonable excuse for the action if there is sufficient evidence to raise an issue with respect to it, and the contrary is not proved beyond reasonable doubt.

110 Subsection (6) provides that a person who commits an offence under this section is liable on conviction on indictment to imprisonment for term not exceeding 14 years.

111 Subsection (7) sets out that for the purpose of this section, sections 14 and 16, an "asylum seeker" means a person who intends to claim that to remove them from or require them to leave the United Kingdom would be contrary to the United Kingdom's obligations under the Convention relating to the Status of Refugees, or the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Section 14: Handling articles for use in immigration crime

112 This section sets out where a person is handling 'relevant articles' (see section 15 for the meaning of relevant article) in relation to certain immigration offences, commits an offence.

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

a. they receive or arrange to receive a relevant article from another person,

b. they remove or dispose of a relevant article for the benefit of another person, or

c. they assist another person to remove or dispose of a relevant article.

114 Subsection (2) sets out the circumstances where a person takes any action outlined in subsection (1), knowing or suspecting at the time that the item(s) in question has been, is being or will be used by themselves or others in connection with an offence under section 24 or section 25 of the Immigration Act 1971 (illegal entry etc and assisting unlawful immigration).

115 Subsection (3) ensures that liability extends beyond those who directly handle such items, to provide that anyone "concerned in" those activities, for example, individuals who arrange, facilitate, finance, or otherwise assist in the handling or movement of such articles, knowing they are to be used in connection with an offence under sections 24 or 25 of the Immigration commits an offence.

116 Subsection (4) sets out the circumstances where a person is concerned in any action outlined in subsection (3), knows at the time that the item(s) in question has been, is being or will be used by themselves or others in connection with an offence under section 24 or section 25 of the Immigration Act 1971 (illegal entry etc and assisting unlawful immigration).

117 Subsection (5) sets out that it is a defence for a person to show that they had a reasonable excuse for action in subsections (1) or (3), as the case may be.

118 Subsection (6) outlines that a person has a reasonable excuse in situations including, but not limited to, where they are taking action to carry out a rescue of someone from danger or serious harm, or where their action is on behalf of an organisation that aims to assist asylum-seekers and does not charge for its services.

119 Subsection (7) outlines that a person has a reasonable excuse for the action if there is sufficient evidence to raise an issue with respect to it, and the contrary is not proved beyond reasonable doubt.

120 Subsection (8) provides that a person who commits an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

Section 15: Sections 13 and 14: meaning of "relevant article"

121 This section defines the meaning of "relevant article" for the purposes of sections 13 and 14.

122 Subsection (1) provides that a "relevant article" is any thing or substance other than those in the list at paragraphs (a) to (i). Personal hygiene products (d) are generally exempt from being classified as a 'relevant article,' unless they contain certain hazardous features, such as glass components, sharp points, blades, or are in aerosol form.

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

124 Subsection (3) sets out that the Secretary of State may by regulations amend this section to add to the list of things and substances specified in subsection (1) which are not relevant articles and make any consequential provisions. Such regulations will be subject to the draft affirmative procedure (see section 63(3)).

Section 16: Collecting information for use in immigration crime

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

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

a. they collect or make a record of information of a kind likely to be useful to a person organising or preparing for a relevant journey (see subsection (5) for the meaning of relevant journey) or part of such a journey,

b. they possess a document or record containing information of that kind, or

c. they view, or otherwise access by means of the internet a document or record containing information of that kind.

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

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

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

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

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

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

133 Subsection (8) sets out a non-exhaustive list of cases in which a person has a reasonable excuse for the purposes of subsection (7). This includes: where at the time of the action or possession, the person did not know and had no reason to believe that the document or record was likely to contain information of a kind likely to be useful to a person organising or preparing for a relevant journey or part of such a journey, carrying out work as a journalist, academic research, carrying out or preparing to carry out a rescue of a person from danger or serious harm, providing or preparing to provide medical care or emergency shelter or supplies, or on behalf of an organisation that aims to assist asylum-seekers and does not charge for its services.

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

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

136 Subsection (11) states that a "record" in this section includes photographic or electronic records.

Section 17: Online advertising of unlawful immigration services

137 Section 17 criminalises the creation or publication of material relating to unlawful immigration services online on internet services, including social media platforms.

138 Subsection (1) sets out that a person will have committed an offence if they have created (or caused the creation of) material and knows or suspects that the material will be published on an internet service and has the purpose or will have the effect of promoting unlawful immigration services.

139 Subsection (2) sets out that a person will have committed an offence if they have published (or caused the publication) of material and the purpose or effect of the material is to promote an unlawful immigration service and the person knows or has reason to suspect that is the case.

140 Subsection (3) sets out express defences for content posted for journalism or academic research purposes which is not in scope of the offence.

141 Subsection (4) outlines that a person who commits an offence under this section is liable on summary conviction in England and Wales to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both). On summary conviction in Scotland, they are liable to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both). On summary conviction in Northern Ireland, they are liable to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both). A person who commits the offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding five5 years or a fine (or both).

142 Subsection (5) defines "material" as anything which consists of text, moving or still images or speech or music.

143 Subsection (6) defines an "unlawful immigration service" as a service that facilitates a breach of an offence under any of the Immigration Acts, a breach of immigration law other than an offence, or an offence under sections 4, 5, or 6 of the Identity Document Act 2010. Immigration law is defined by section 25(2) of the Immigration Act 1971. Sections 4, 5, and 6 of the Identity Act concern the possession of false identity documents and possession of apparatus designed to create false documents. Subsection (6) also limits the types of identity document concerned to immigration documents or passports issued in the UK or elsewhere.

144 Subsection (7) defines publishing to mean making content available to the public at large or any section of the public.

145 Subsection (8) defines an internet service as a service that is made available by the internet or a combination of the internet and an electronic communications service.

146 Subsection (9) outlines that this section is subject to section 18.

Section 18: Application of section 17 to internet service providers

147 Section 18 provides intermediary liability protections for internet service providers meaning they will not be impacted by this offence and the actions of the individuals being targeted who are promoting unlawful immigration services online where they merely perform technical processes in relation to the content. Internet service providers include user-to-user services (such as social media and messaging platforms), search services and websites accessed through the internet as well as services that provide access to the internet. Subsection (1) sets out that internet service providers which act as conduits do not commit the offence by providing access to a communication network or by transmitting information provided by a user, if they do not initiate the transmission, select the recipient or select/modify the information contained in the transmission.

148 Subsection (2) sets out that, for such internet service providers, providing or transmitting information includes storage of information if it is automatic, transient and solely to enable the transmission and for no longer than is reasonably necessary.

149 Subsection (3) sets out that an internet service providers which provide services including content delivery and search engine caching do not commit the offence by storing information for transmission if the information is automatic, temporary and is solely for the purpose of making the onward transmission of information to other users, providing they do not modify the information, comply with conditions to having access to the information and removes the information or disable access to it, if necessary.

150 Subsection (4) sets out the circumstances in which the information must be removed or access disabled.

151 Subsection (5) sets out that an internet service provider does not commit an offence by storing information provided by a user (who is not under their control or authority) if when the information was provided they were not aware of the purpose or effect of it (promoting unlawful immigration) and on becoming aware of this, they promptly remove the information or disable access to it.

152 Sub-section (6) sets out that the definitions of "material" and "unlawful immigration service", as per section 17(5) and (6), apply to section 18.

153 Subsection (7) defines an internet service as a service that is made available by means of the internet, or a service that provides access to the internet.

Section 19: Liability for offence under section 17 committed by a body

154 Section 19 establishes the liabilities of relevant persons if online material promoting unlawful immigration services is created or published by a "body". A "body" means a body corporate, a partnership or an unincorporated association other than a partnership.

155 Subsection (1) sets out that the offence under section 17 applies if it is committed by a "body" as defined by subsection (3).

156 Subsection (2) sets out that if the offence is committed with the consent of a person who is a relevant person in relation to the body or by somebody purporting to act in a relevant person's capacity, the person and the body commits the offence.

157 Subsection (3) defines the term "body", such as a company, partnership or an unincorporated body. It also defines who a "relevant person" is for each type of body, for example, relevant persons may be a director or a partner.

Section 20: Offences committed outside the United Kingdom

158 This section makes further provision about the offences in sections 13, 14, 16 and 17.

159 Subsection (1) sets out that sections 13(1), 14(1), 16(1), 17(1) or 17(2) apply to things done both inside or outside the United Kingdom, regardless of the nationality of the person by whom they are done or whether they are done by a body formed inside or outside of the UK.

160 Subsection (2) provides that where an offence under sections 13, 14, 16 or 17 is committed outside of the United Kingdom, proceedings for the offence may be taken in the United Kingdom. Subsections (3) and (4) make further provision about the application of subsection (2) in Scotland.

Endangering another during sea crossing to United Kingdom

Section 21: Endangering another during sea crossing to United Kingdom

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

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

163 Subsection (2) also defines key expressions for the purposes of section 21 by inserting subsection (E1B). Subsection (E1B)(a) defines "personal injury" as meaning physical or psychological injury. Subsection E1B(b) sets out that the "relevant period" of the journey

begins when the person committing the offence first left dry land in France, Belgium or the Netherlands for the purpose of making the journey. This includes the process of boarding the first, if more than one, vessel. The "relevant period" ends when the person reaches dry land in the United Kingdom. Subsection (E1B)(c) explains that land is to be regarded as "dry land" at any particular time if it is not covered by water at that time.

164 Subsection (3) sets out the maximum sentence for the offence by inserting sub-paragraphs (iii) and (iv) into subsection (F1(d). For an offence committed in connection with an offence under subsection (A1) of section 24 of the Immigration Act 1971, the maximum sentence is six years or a fine or both. For an offence committed in connection with an offence under subsections (B1), (D1) or (E1) of section 24 of the Immigration Act 1971, the maximum sentence is five years or a fine or both.

165 Subsections (4), (5) and (6) make amendments to subsections (3), (4) and (5) of section 24 of the Immigration Act 1971 to include references to subsection (E1A) of section 21, as inserted by subsection (2).

166 Subsection (7) inserts a new subsection (6) into section 24 of the Immigration Act 2024 which explains that subsection (E1A) as inserted by subsection (2), refers to acts carried out inside or outside the United Kingdom.

167 Subsection (8) inserts a new subsection (7) into section 24 of the Immigration Act 2024 and states that where a person is on trial charged with an offence under section 21 and is found not guilty by the relevant court, sheriff or jury of the section 21 offence, the person may still be found guilty of an offence under subsection section 24(A1), (B1), (D1) or (E1) of section 24 of the Immigration Act 1971, as applicable.

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

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

Powers of search etc in relation to electronic devices

Section 22: Meaning of key expressions

170 This section defines key expressions for the purposes of sections 22-28.

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

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

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

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

175 Subsection (6) defines "authorised officer" as meaning Immigration Officers, Police Service of Scotland, Police Service of Northern Ireland and National Crime Agency officers (NCA officers). There is also a power in section 28 for the Secretary of State to make regulations to provide that reference in this section (and in sections 23, 24 and 25) to an "authorised officer" includes a person described in those regulations.

176 Further detail on a 'relevant article' is provided at section 29.

Section 23: Powers of authorised officers to search for relevant articles

177 This section confers power for an authorised officer to search a relevant person for a relevant article in circumstances where the authorised officer has reasonable grounds to suspect that the person is in possession of a relevant article (subsection (1)).

178 Subsection (2) explains that an authorised officer may only search a person under subsection (1) if the person has not previously been searched since the person's entry or arrival as defined in section 22(3).

179 Subsection (3) sets out that the power of an authorised person under subsection (1) allows the search of the person's mouth and allows the authorised officer to require the person to remove an outer coat, jacket or glove but no other clothing.

180 Subsections (4), (5) and (6) confer powers for an authorised officer to search property, premises and a vehicle or container, for any relevant article, in certain circumstances and set out what those circumstances are.

181 Subsection (7) requires a constable to gain authorisation from a police officer of at least the rank of inspector before they may exercise any of the powers under this section.

182 Subsection (8), if an inspector gives an authorisation under subsection (7), an inspector must ensure that, if they authorise a police constable to use these powers, a superintendent is notified as soon as possible.

183 Subsection (9) requires the authorisation of an NCA officer at or above a grade that is equivalent to the rank of inspector before an NCA officer exercise any of the powers under this section.

184 Subsection (10) requires that the authorising officer under subsection (9) above must promptly ensure an NCA officer of a grade equivalent to superintendent rank or higher is informed.

185 Subsection (11) enables a constable and NCA officers to use reasonable force in exercising the powers under this section. Subsection (12) applies the offences of resisting, wilfully obstructing and assaulting an NCA officer to an NCA officer exercising a power under subsection (12).

Section 24: Powers to seize and retain relevant articles

186 This section confers power for an authorised officer to seize any relevant article which has been found on a search under section 23 or is not found on a search but appears to the officer to be, or to have been, in the possession of a relevant person. Where legally privileged information cannot be separated from the relevant article, section 24 contains safeguards to ensure it is protected (see section 24).

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

188 Subsection (4) enables an NCA officer to seize a relevant article under subsection (1) only if the seizure of the article is authorised by an NCA officer at or above a grade that is equivalent to the rank of inspector.

189 Subsection (6) enables a constable or an NCA officer to use reasonable force, if necessary, in the exercise of a power under subsection (1).

190 Subsection (7) applies the offences of resisting, wilfully obstructing and assaulting an NCA officer to an NCA officer exercising a power under section 24(7).

191 Subsection (8) enables an NCA officer to give a relevant article seized by an NCA officer to an immigration officer or the Secretary of State.

192 Subsection (9) provides that an authorised officer or the Secretary of State may retain an article for as long as is considered necessary for the purposes of accessing, examining or copying the information, in line with section 26 and how it must, subject to the exceptions set out, be returned once the retention is no longer considered necessary for those purposes.

193 Subsection (10) sets out to whom the relevant article must be returned under subsection (9).

194 Subsections (11) to (16) set out the process for disposal of a relevant article where it cannot be returned to a person in accordance with subsection (6) and is not required to be dealt with under section 25.

195 Subsections (14), (15) and (16) include provisions about the disposal of a relevant article that comes into the possession of a constable of the Police Service of Scotland or a constable of the Police Service of Northern Ireland.

Section 25: Duty to pass on items seized under section 24

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

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

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

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

200 Subsection (5) sets out the circumstances in which a person notified under this section can refuse to accept the relevant article. Subsection (6) confirms that if the person notified agrees to accept the article, it must be passed to the person as soon as reasonably practicable. Subsection (7) ensures that where a relevant article is passed on, any provision of an enactment which apply to items seized or taken away by the person applies to the relevant article as if it had been seized or taken away by the person for the purposes of the investigation of the relevant offence. Subsection (8) explains that if a person informs an immigration officer that they will not accept the relevant article, by virtue of subsection (5)(a), the immigration officer must decide whether to continue to retain the article under section 24(9).

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

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

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

204 Subsection (12) confirms that this section applies to a relevant article retained under section 24(9)(a) by the Secretary of State in the same way as it applies to an immigration officer.

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

206 Subsection (14) defines "enactment" and "immigration offence", for the purposes of this section.

Section 26: Powers to access, copy and use information stored on relevant articles

207 This section confers a power for an authorised officer or the Secretary of State to access and examine any information stored on a relevant article (that is retained under section 24(9)(a)), copy and retain information that relates, or may relate, to the commission (whether in the past or future) of an offence under section 25 or 25A of the Immigration Act 1971; and use any information retained for any purpose relating to the prevention, detection, investigation, or prosecution of such an offence.

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

209 Subsection (4) and (5) requires NCA officers follow an authorisation process to use the powers to access, examine, copy, retain or use information.

Section 27: Amendment of the Criminal Justice and Police Act 2001

210 This section amends the Criminal Justice and Police Act 2001 so that provisions relating, amongst other things, to the protection of legally privileged material and excluded and special material apply when relevant articles are seized under section 24.

Section 28: Extension of powers to other persons

211 This section provides that the Secretary of State may by regulations (subject to the negative procedure) make provision for the powers available to authorised officers in sections 22, 23, 24 and 26 to be available to other people, including persons designated by the Secretary of State.

Section 29: Meaning of other expressions

212 This section defines "container", "deportation order", "electronic travel authorisation", "entry clearance", "immigration officer", immigration rules", "premises", "ship" and "vehicle", and "NCA Officer" for the purposes of sections 22 to 26.

Sharing of information

Section 30: Supply of customs information by HMRC

213 His Majesty's Revenue and Customs (HMRC) exercises a range of statutory customs functions in respect of both the collection and management of customs duty and the control and administration of imports/exports more generally. The exercise of these functions requires the collection and appropriate management of information. These include various functions relating to: the collection and management of customs duty; monitoring and controlling the movement of goods, including for purposes relating to safety and security and the customs enforcement of intellectual property rights; and the control of cash entering or leaving the UK.

214 HMRC's statutory framework on confidentiality requires a legal basis to be able to lawfully disclose HMRC information held in connection with departmental functions. This section provides a suitable legal basis for disclosure by HMRC of information held in relation to its customs functions to a range of recipients, including UK Ministers, government departments and police, and certain international partners, as described in the section. The information shared may extend to other taxes and duties apart from customs duty (for example, VAT and excise duty) but only to the extent it is held in relation to HMRC's customs functions. For example, the measure allows HMRC to share VAT information relating to the import of goods that is captured as part of their customs functions, but not other VAT information submitted by businesses on their VAT returns.

215 This section allows HMRC to share customs information in support of functions exercised by the recipients, including those relating to ensuring the security of UK borders. UK Ministers, government departments and police will be able to re-use customs information for any of their functions, and further share it for the limited purposes specified in section 31. All disclosures permitted by these sections will remain subject to data protection legislation, and disclosures outside of the section's permissions will be restricted by reference to existing criminal penalties under the Commissioners for Revenue and Customs Act 2005.

216 Subsection (1), gives HMRC, or anyone acting on HMRC's behalf, the power to supply information that HMRC holds in connection with its customs functions. The power is limited to supplying information to persons within section 30(3).

217 Subsection (2) defines "customs functions" as HMRC's functions in their capacity as a customs service. It includes in particular their functions in that capacity relating to (a) the movement of goods or cash into, out of or within the United Kingdom, and (b) the imposition, enforcement or other regulation of any tax or duty relating to such movement of goods.

218 The information may be shared with both UK recipients and non-UK recipients, as stated in subsection (3). UK recipients with whom information may be shared include a Minister of the Crown or a government department and a UK authorised person. Information may also be shared to specified persons within the Home Office, such as the Border Security Commander and the Director of Border Revenue (see subsection (3)(b)-(e)).

219 Regarding "Minister of the Crown", this has the same meaning, as stated in subsection (5), as in the Ministers of the Crown Act 1975 (see section 8(1) of that Act): "[T]he holder of an office in Her Majesty's Government in the United Kingdom, and includes the Treasury, the Board of Trade and the Defence Council." Regarding "government department", this is defined at subsection (5), in such a way that includes a body exercising statutory functions on behalf of the Crown, such as the National Crime Agency, and the governments of the devolved administrations. Regarding, "UK authorised person", these UK persons are specified in section 36(3), and are police personnel.

220 Non-UK recipients with whom information may be shared, as stated in subsection (3), are: (g) A government of a country or territory outside the United Kingdom; (h) A person in a country or territory outside the United Kingdom with public functions either (i) relating to the movement of goods or cash into or out of that country or territory, or (ii) relating to the imposition, enforcement or other regulation of any tax or duty relating to such movement of goods; and (i) An international organisation to which subsection (3) applies.

221 Sharing information with international organisations is further clarified by subsection (4) which has the practical effect of limiting the sharing of information under 30(1) to international organisations that have functions relating to: (a) the movement of goods or cash across international borders; or if an international arrangement makes provision for cooperation between the organisation and HMRC. "International arrangement" is defined, in subsection (5), as "an international agreement or arrangement to which any of the following is a party: (a) the United Kingdom; (b) His Majesty's Government; (c) HMRC; (d) the Commissioners for His Majesty's Revenue and Customs.".

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

Section 31: Use and disclosure of information supplied under section 30

223 This section regulates how the information supplied under section 30 may be used and disclosed by its recipients.

224 Subsection (1) sets a general rule that a person who receives information under section 30(1) may (a) use it only for the purposes for which it was supplied, and (b) not further disclose it without the consent of the Commissioners for His Majesty's Revenue and Customs (which may be general or specific). However, this general rule is subject to the following provisions, which enable certain recipients to use and disclose information more flexibly.

225 Subsection (2) relates to information that is shared under section 30(1) with a person listed within section 30(3)(a) to (f). Such information may be used for the purposes of any of the recipient's functions. For example, information supplied by HMRC to the Secretary of State for use for immigration purposes can also be used by the Secretary of State for any of their other functions.

226 Persons to whom subsection (3) applies (being either the Secretary of State for the Home Department or other specified persons within the Home Office, as per subsection (4)) are able to supply information to each other for the purpose of any of the recipient's functions. The effect of this is that information shared within the Home Office can be used for any Home Office function, rather than being limited to the functions of the initial recipient. For example, information shared with the Secretary of State for the Home Department (SSHD) under section 30(1) can be further supplied to the Director for Border Revenue for use for any of that post holder's functions, even those not exercisable by the SSHD.

227 Subsection (5) is a saving provision that clarifies that, should the general customs functions exercisable by the Secretary of State for the Home Department transfer to another Secretary of State, then subsection (4) should be read at that time as including a reference to the Secretary of State to whom those general customs functions are exercisable.

228 Subsection (6) clarifies that persons within subsection (3)(b) to (e) of section 30 (i.e., specified persons within the Home Office) to whom information is supplied under section 30(1) or 31(3) are, for the purposes of subsections (7) to (10), which relate to the onward supply of information, to be treated as also having had the information supplied to them in their capacity as an official of the Secretary of State.

229 Subsection (7) concerns persons listed within section 30(3)(a) or (f). To the extent that this is not already permitted by subsection (3), these persons may supply information received under section 30(1) to other persons likewise listed within section 30(3)(a) to (f) for use for the purposes listed at subsection (7)(a) to (g). These purposes broadly related to border security and law enforcement.

230 Subsection (8) provides that the Secretary of State by whom immigration and nationality functions are exercisable may also supply information received under section 30(1) to any person (whether or not within the United Kingdom) for use for the purposes listed at subsection (8)(a) to (b). Note that subsection (13) provides further definitions for the terms used here, including a definition for "immigration and nationality functions".

231 Subsection (9) provides that the Secretary of the State by whom general customs functions are exercisable may also supply information received under section 30(1) to any person (whether or not within the United Kingdom) for use for the purposes listed at subsection (9)(a) to (b).

232 Subsection (10) provides that information may be supplied to any person in pursuance of an order of a court if the information is received under or by virtue of: (a) section 30(1); (b) section 31(1)(b), (7), (8) or (9); or (c) section 32(3) or (4)(b).

233 Subsection (11) provides that section 31 does not prevent the disclosure of information to HMRC. While subsection (12) confirms that section 31 is subject to section 32.

Section 32: Further provision about use and disclosure of information under section 31

234 This section sets out how information supplied under section 31 may be used and disclosed by recipients.

235 Subsection (1) states that sections 31(2), (7), (8) or (9), which permit the use and onward supply of information, do not apply if the use or supply of the information would breach any restrictions that were imposed by HMRC, or a person acting on HMRC's behalf, when the information was supplied under section 30(1).

236 Subsections (2) to (4) clarify the restrictions on recipients regarding the use and onward disclosure of information received under section 31.

237 Subsection (2) restricts a person who receives information under or by virtue of section 31(1)(b), (7), (8) or (9) or by virtue of 32(3) or (4)(b) to only using it for the purposes for which it was supplied to them. Subsection (3) further restricts such a person so that they may not further disclose this information without the consent of the Commissioners for His Majesty's Revenue and Customs (which may be general or specific).

238 Subsection (4) provides that any person who receives information under section 31(3) may not further disclose it except as permitted by subsection (3), (7), (8), (9) or (10) of that section or without the consent of the Commissioners for His Majesty's Revenue and Customs (which may be general or specific). In the case of information received by virtue of 32(4) itself, onward disclosure is only permitted with the consent of the Commissioners for His Majesty's Revenue and Customs.

239 Subsection (5) adds further safeguards regarding the onward disclosure and receipt of information. Any person who supplies information in reliance on section 31(1)(b), (7), (8) or (9), or section 32(3) or (4)(b) must notify the recipient(s) that the limitations and prohibitions that apply to the information by virtue of section 32.

240 Subsections (6) and (7) extend the existing offence of wrongful disclosure so that it applies in circumstances where a person discloses information, relating to a person whose identify is specified in, or can be deduced from the disclosure, in contravention of subsection (1)(b) of section 31 or subsection (3) or (4)(b) of section 32. Subsection (7) provides that the offence applies in relation to such disclosures as it applies in relation to a disclosure in contravention of section 20(9) of that Act.

241 Subsection (8) clarifies that section 32 does not prevent the disclosure of information to HMRC.

Section 33: Supply of trailer registration information

242 This section relates to the supply of trailer registration information by the Secretary of State for Transport.

243 Subsection (1) establishes a discretionary power for the Secretary of State for Transport to supply that information in accordance with subsections (3) to (8). Subsection (2) defines the meaning of "trailer registration information" as information held by the Secretary of State for Transport under Part 2 of the Haulage Permits and Trailer Registration Act 2018.

244 Subsection (3) makes provision for trailer registration information to be supplied to the Secretary of State for the Home Department for one or more of the purposes listed in subparagraph (a) to (f). These are (a) immigration purposes; (b) the law enforcement purposes; (c) human welfare purposes; (d) purposes connected with the exercise of functions under the Proceeds of Crime Act 2002, (e) safeguarding national security; and (f) responding to an emergency.

245 Subsection (4) makes provision for the trailer registration information being supplied to the Secretary of State by whom general customs functions are exercisable, for use in connection with those functions.

246 Subsections (5) and (6) make provision for the trailer registration information being supplied to the NCA and HMRC respectively for use in connection with any of their functions.

247 Subsection (7) makes provision for the trailer registration information being supplied to a "UK authorised person" and a "UK authorising officer" (limited to persons engaged in policing by subsections 36(3) and (4)) for use in connection with; (a) "specified purposes related to policing" (subsection 36(8) confers regulation making powers); (b) the law enforcement purposes; and (c) safeguarding national security.

248 Subsection (8) makes provision for the trailer registration information being supplied to a "non-UK authorised person" and a "non-UK authorising officer" (limited to specified persons concerned with law enforcement, customs and immigration in Guernsey, Jersey, the Isle of Man and Gibraltar, by subsections 36(6) and (7)) for use in connection with; (a) the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security; and (b) purposes connected with the exercise of any statutory functions of the recipient relating to customs, excise, immigration or the proceeds of crime.

249 Subsection (9) enables the Secretary of State to supply information received under subsection (3) to; (a) an immigration officer; (b) a designated customs official; and (c) the Border Security Commander, for use in connection with any of the purposes listed in subsection (3)(a) to (f). Subsection (10) operates in the same way so that information received by the Secretary of State under subsection (4) may be supplied by them to; (a) the Director of Border Revenue; and (b) a designated customs official, in connection with a customs function exercisable by that person. These ensure fluidity of information sharing within the Home Office.

250 Subsection (11) is a saving provision that clarifies that, should the general customs functions exercisable by the Secretary of State for the Home Department under subsection (3) transfer to another Secretary of State, then the powers under subsection (3) should be read as the Secretary of State to whom those general customs functions are transferred.

Section 34: Onwards sharing of information shared under section 33

251 This section regulates the onward sharing of information supplied to persons under section 33 specifically with respect to the Home Office, and a "UK authorised person" and a "UK authorising officer"; it is envisaged that any onward sharing will be on a case-by-case basis. It does not regulate onward sharing by the NCA and HMRC because "as creatures of statute" safeguards are provided for elsewhere. The same applies with respect to the Crown Dependencies and Gibraltar (for any information received under subsection 33(8)) as those territories are governed by their own legislation.

252 Subsection (1)(a) makes provision for a person who receives information under subsections 33(3), (4), (9) or (10), that is, the Secretary of State, an immigration officer; a designated customs official; the Border Security Commander; and the Director of Border Revenue, to supply that information to a person exercising public functions (whether or not within the United Kingdom) for use in connection with any of the purposes listed in (i) to (viii). These are; (i) immigration purposes; (ii) the purposes of exercising a customs function; (iii) specified purposes related to policing; (iv) the law enforcement purposes; (v) human welfare purposes; (vi) safeguarding national security; (vii) responding to an emergency; and (viii) purposes connected with civil or criminal legal proceedings or a criminal investigation (including proceedings or an investigation outside the United Kingdom). Subsection (1)(b) makes provision for those persons to supply that information to another person in pursuance of; (i) an order of a court; or (ii) an agreement to which the United Kingdom or His Majesty's Government is a party.

253 Subsection (2) extends the disclosure powers in subsection (1)(a) and (b)(i) to a "UK authorised person" and a "UK authorising officer" who receives information under subsection 33(7).

Section 35: Sections 30 to 34: general provision about disclosure

254 This section makes general provision about disclosure with respect to sections 30 to 34. Subsection (1) clarifies that nothing in sections 30 to 34 limits how information may be supplied apart from those sections. Subsection (2) clarifies that nothing in sections 30 to 34 authorises disclosure where it would contravene the investigatory powers legislation. Subsection (3) defines "the investigatory powers legislation" by reference to the Investigatory Powers Act 2016.

Section 36: Sections 30 to 34: interpretation

255 This section is concerned with the interpretation of sections 30 to 34. Subsection (1) states this as its purpose.

256 Subsection (2) defines references to persons as having the meanings specified, including with reference to any acts (as applicable) regarding; "the Border Security Commander"; a "designated customs official"; "the Director of Border Revenue"; "HMRC"; and an "immigration officer".

257 Subsection (3) defines a "UK authorised person" for the purposes of any information supplied under (a) section 30 (supply of customs information by HMRC) and (b) section 33 (supply of trailer registration information by the Secretary of State for Transport) and section 34

(onwards sharing of information shared under section 33), where a person in the first column of the subsequent table may be authorised to receive the information by the authorising officer specified in the corresponding entry in the second column of the table.

258 Row 1 of column 1 defines the authorised person as "a constable or other person who is under the direction and control of a person who has the direction and control of a body of constables". With respect to constables, any constable, be they in a UK territorial police force, in a UK specialist police force (British Transport Police, Ministry of Defence Police and the Civil Nuclear Constabulary), a UK Ports Police body, and the Mersey Tunnels Police would be able to access trailer registration information if they were authorised to do so by the "authorising officer". Ports police constables include those sworn under section 79 of the Harbours, Docks and Piers Clauses Act 1847, additionally under the Mersey Docks and Harbour (Police) Order 1975 for the Port of Liverpool Police; under section 154 of the Port of London Act 1968 for the Port of Tilbury Police; and under section 103 of the Tees and Hartlepools Port Authority Act 1966 for the Teesport and Hartlepool Harbour Police. Mersey Tunnels Police are sworn under section 105(2) of the County of Merseyside Act 1980. Parks and cathedral constables are not within scope.

259 The "other person" within the formulation refers to a person who might otherwise be described as "police staff" or "police civilian staff". Many police forces employ police staff as analysts or to work in control rooms. While there may for example be sworn constables in control rooms, it is not the intention to limit them to retaining sworn constables when it would be operationally more efficient for these roles to be undertaken by unwarranted police staff. This definition enables trailer registration information to be supplied not only to persons who are employed by the police pursuant to an employment contract (police civilian staff in the conventional sense), but also police volunteers and contractors, provided they are authorised to receive the information. This includes civil servants such as those employed by the Ministry of Defence and assigned to the MoD Police, those provided under section 4 of the Police (Northern Ireland) Act 2000 assigned to the Police Service of Northern Ireland, and NCA officers on secondment to a police force; subject in each case to being duly authorised by the authorising officer of that body of constables.

260 In row 1 of column 2 the "authorising officer" for a constable or other person in column 1 is described as "the person under whose direction and control the constable or other person is". It is designed to take account of police bodies not led by a "Commissioner", a "Chief Constable" or a "Chief Officer" used elsewhere (as these have specific legal meanings) that exclude the commanders of Ports Police and the Mersey Tunnels Police. The formulation is expressly designed to include these latter types of police (as well as the former), critical as they are to policing maritime ports, and designated roads infrastructure near the Port of Liverpool.

261 The Service Police provide investigatory (including for crime) and policing services to the Armed Forces. Row 2 of column 1 enables "a member of a service police force or other person" ("other person" such as a civil servant or a contractor) who is under the direction and control of the relevant Provost Marshal (of the Royal Navy Police, the Royal Military Police, the Royal Air Force Police, and the tri-service serious crime unit); and authorised to access to the data. Row 2 of column 2 defines the authorising officer as "the relevant Provost Marshal".

262 Subsection (4) defines "constable" as being inclusive of special constable; and defines "relevant Provost Marshal" and "service police force" with respect to the Armed Forces Act 2006.

263 Subsection (5) defines a "UK authorising officer" as (a) a person having the direction and control of a body of constables, and (b) a Provost Marshal.

264 Subsections (6) and (7) define a "non-UK authorised person" and a "non-UK authorising officer" referred in subsection 33(8) with respect to Jersey, Guernsey, the Isle of Man and Gibraltar where the "non-UK authorised person" in the first column of the table following (6) may be authorised by a "non-UK authorising officer" specified in the corresponding entry in the second column, to receive information supplied under section 33. The listed persons undertake work corresponding with their counterparts in the UK as specified in subsections 36(3) to (5) with respect to policing, law enforcement, customs, and immigration.

265 Subsection (8) defines the meanings of purposes or functions referred in sections 30-34 with respect to; a "customs function"; a "general customs function"; "HMRC functions"; "human welfare purposes"; "immigration purposes"; "the law enforcement purposes"; and "NCA functions". Subsection (8) also confers a regulation making power on the Secretary of State to define "specified purposes related to policing". Before making regulations under subsection (8), subsection (9) places a duty upon the Secretary of State to consult; (a) the Scottish Ministers, (b) the Department of Justice in Northern Ireland, and (c) such persons appearing to the Secretary of State to represent the views of a body of constables in the United Kingdom as the Secretary of State considers appropriate. The intention is to ensure that both the Scottish Ministers and DoJ NI must always be consulted before regulations are made, but for the Secretary of State to retain discretion when considering which other persons connected with policing should be consulted.

Provision of biometric information from evacuees etc.

Section 37: Provision of biometric information from evacuees etc.

266 This section provides a power for authorised persons to take biometric information where the government is in the process of facilitating their exit from a state or territory. The provision provides operational flexibility in instances where the government may wish to facilitate the exit from one country into another (including but not limited to crisis or evacuation scenarios).

267 Subsection (1) grants authorised persons the power to take biometric information, including fingerprints and facial images, from individuals to whom the section applies.

268 Subsection (2) outlines the conditions under which this power can be exercised, namely that the authorised person reasonably believes the individual is subject to immigration control; and the government is in the process of facilitating the individual's departure from a state or territory.

269 Subsection (3) establishes additional safeguards for the taking of biometric information from children under the age of 16. It requires that a parent, guardian, or a responsible adult must be present when biometric information is taken, ensuring that the child's welfare is protected.

270 Subsection (4) ensures that authorised persons or officers of the Secretary of State cannot act as the responsible adult for the purposes of subsection (3), maintaining impartiality in the process.

271 Subsection (7) confirms that "taking biometric information" includes recording such information.

272 The provision explicitly allows biometric information to be taken outside the UK to address operational requirements in international evacuation efforts, where urgent action is needed to facilitate exit of one country and entry to another, or where access to secure UK facilities is not immediately feasible.

Section 38: Use and retention of information taken under section 37

273 Subsection (1) requires that biometric information taken under Section 37 must be provided to the Secretary of State as soon as possible.

274 Subsection (2) sets out the principal purposes for which the Secretary of State can use the biometric information, namely immigration and nationality purposes, and law enforcement and national security purposes.

275 Subsections (3) and (4) confirm that the biometric information can only be kept by the Secretary of State if it is needed for the above purposes and must be deleted after 5 years, unless it can be held under another power.

276 Subsection (6) provides the Secretary of State can also use the information to identify whose exit has been facilitated.

Provision of biometric information at ports in Scotland

Section 39: Provision of biometric information at ports in Scotland

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

278 Schedules 7 & 3 of those Acts allow Counter-Terrorism Police Officers to detect, disrupt and deter terrorism and hostile activity at the border. They allow an Examining Officer (that is a constable or a designated immigration or customs officer) to stop, question, search and detain a person at a port or at the border area in Northern Ireland, for the purpose of determining whether the person appears to be a person who is, or has been, engaged in terrorism or hostile activity respectively. An Examining Officer may stop and question a person whether or not there are grounds for suspecting that the person is or has been engaged in terrorism or hostile activity.

279 In England, Wales and Northern Ireland paragraph 10 of Schedule 8 to the TACT and paragraph 34 of Schedule 3 to the CTBSA allow Examining Officers to take fingerprints and non-intimate DNA samples ("biometrics") from individuals who have been detained under these powers while they are at the port.

280 The powers for taking these biometrics in Scotland are contained in paragraph 20 of Schedule 8 to the TACT and paragraph 42 of Schedule 3 to the CTBSA. Amongst other things, a key difference is the requirement for those detained under Schedules 3 or 7 in Scotland to be taken to a police station in order to have their biometrics taken. This section enables the biometrics of persons detained in Scotland under Schedule 3 or 7 to be taken at ports, thereby bringing the position in Scotland into line with that in England, Wales and Northern Ireland.

281 The exercise of the powers under Schedule 7 to TACT and Schedule 3 to the CTBSA is subject to codes of practice issued by the Secretary of State; these will be updated ahead of commencement of this section to reflect the changes made to the power to take biometrics in Scotland.

Part 2: Asylum and Immigration

Repeal of immigration legislation

Section 40: Repeal of the Safety of Rwanda (Asylum and Immigration) Act 2024

282 This section repeals in its entirety the Safety of Rwanda Act such that it will no longer have effect.

Section 41: Repeal of certain provisions of the Illegal Migration Act 2023

283 Subsection (1) lists the provisions in the Illegal Migration Act 2023 which this Bill repeals. The provisions not being repealed are: section 12 (period for which persons may be detained); section 29 (modern slavery, amendment of section 63 of the Nationality and Borders Act 2022); section 52 (Judges of First-tier Tribunal and Upper Tribunal); section 59 (inadmissibility of certain asylum and human rights claims); section 60 (cap on number of entrants using safe and legal routes); section 62 (credibility of claimant: concealment of information etc); and sections 63 to 65 and 67 to 69 (relevant final provisions of the Illegal Migration Act).

284 Subsection (2) provides that section 8AA of the Immigration Act 1971 (as inserted by the section 30(3) of the Illegal Migration Act 2023) is to be treated as having never been in force. Section 8AA originally came into effect on the day the Illegal Migration Act was passed (20 July 2023) and was retrospective in effect from the day the Act was introduced into Parliament (07 March 2023). The retrospective effect caused complexity for the immigration system and created a risk that the Home Office was acting in a manner inconsistent with legislation; potentially granting leave ultra vires to those who should be subject to the bars on obtaining immigration status.

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

Section 42: Sections 40 and 41: consequential amendments

286 This section makes consequential amendments necessary as a result of the repeal of the provisions of the Illegal Migration Act 2023 (section 40) and the repeal of the Safety of Rwanda (Asylum and Immigration) Act 2024 (section 41).

The Immigration Services Commissioner

Section 43: Immigration advisers and immigration service providers

Schedule 1

287 Paragraph 1 of Schedule 1 provides that the Immigration and Asylum Act 1999 (the "IAA 1999") is amended in accordance with that Schedule. Paragraphs 2 and 3 create the power to amend the definition of 'relevant matters', set out at section 82(1) IAA 1999 by regulations. This will allow for the list of 'relevant matters', that the Immigration Services Commissioner (Commissioner) has regulatory oversight of, to become flexible and adapt with the changing landscape of immigration advice.

288 This will introduce a Henry VIII power which means that primary legislation can be amended by secondary legislation. So the amendment in paragraph 3 makes provision for such regulations to be subject to the affirmative procedure.

289 Paragraphs 4, 5 and 6 of Schedule 1 make further amendments to Part 5 and Schedule 6 IAA 1999.

290 Paragraph 4 amends section 84 of the IAA 1999 to confirm that a person suspended under new paragraph 4AA or 4B of Schedule 6 is not to be treated as a registered person for the purposes of section 84 IAA 1999 and makes provisions for the recording of the suspension on the Commissioner's register.

291 Paragraph 5 of Schedule 1 inserts five new subsections into section 87 IAA 1999 (appeals to First-tier Tribunal):

292 Subsection (3AA) provides that the Commissioner's decision to cancel a person's registration under paragraph 4A(e) of Schedule 6 IAA 1999 is upheld whilst an appeal against that decision is running where conditions A or B are met (see below).

293 Subsection (3AB) defines 'Condition A'. This is where the Commissioner notifies a person to which a decision under paragraph 4A(e) of Schedule 6 IAA 1999 has been made that the Commissioner considered that they are acting or have acted in a way which creates a risk of serious harm to persons seeking immigration advice or services or creates a risk to the system of immigration control in the UK. Such a decision to cancel their registration has effect from the time in the notice.

294 Subsection (3AC) defines Condition B as a decision to cancel a person's registration either wholly or partly on the basis that they have been convicted of an offence involving dishonesty or deception, or of an indictable offence.

295 Subsection (3D) provides that where a decision has been made under paragraph 4A(e) of Schedule 6 IAA 1999, section 87(3B) of the IAA 1999 does not apply where Condition B has been met. In other words, where a person has been convicted of an offence involving dishonesty/deception or an indictable offence, the Tribunal Procedure Rules cannot permit the First-tier Tribunal to direct the 'relevant decision' to have no or limited effect. This upholds the Commissioner's 'relevant decision' during the appeal.

296 Subsection (4A) provides a non-exhaustive definition of the types of activities which constitute creating a "a risk of serious harm to the system of immigration control in the United Kingdom".

297 Paragraph 6 of Schedule 1 makes amendments to Schedule 6 of the IAA 1999, inserting subparagraph 4AA and amending paragraph 4B.

298 Subparagraph 4AA(1) gives the Commissioner power to suspend registration where they have reason to suspect the registered person is acting or has acted in a way which creates a risk of serious harm to persons seeking immigration advice or services, or creates a risk to the system of immigration control in the UK where it is deemed necessary to suspend that person's registration.

299 Subparagraph 4AA(2) allows the Commissioner to cancel a suspension decision under 4AA(1) where the Commissioner is no longer satisfied that a person is acting or has acted in a way which creates a risk of serious harm to persons seeking immigration advice or services, or creates a risk to the system of immigration control in the UK and that such suspension of a person's registration is necessary.

300 Subparagraph 4AA(3) requires the Commissioner to consider whether to cancel the suspension decision under 4AA(1) periodically (before the end of the first 7 working days beginning the working day after the day that the Commissioner issued the suspension notice, and each subsequent 7 working days thereafter). Subparagraph 4AA(4) introduces the right of appeal against the suspension decision.

301 Subparagraph 4AA(5) provides a non-exhaustive list of what is meant by conduct creating a serious risk of harm to the system of immigration control in the UK. Subparagraph 4AA(6) defines "working day" for the purposes of paragraph 4AA.

302 Subparagraph 4B(1) of Schedule 6 IAA 1999 is substituted with a new paragraph to reflect that the Commissioner may, by notice in writing, suspend a registered person where that person is charged with an offence involving dishonesty or deception, an indictable offence, or an offence under section 25 or 26 (1)(d) or (g) of the Immigration Act 1971.

303 Subparagraph 4B(1A) sets out that the Commissioner may cancel the suspension by providing notice in writing to the suspended person. Subparagraph 4B(1B) gives a right of appeal to the First-tier Tribunal to a person whose registration is suspended under sub-paragraph 4B(1).

304 Paragraph 6(4) of Schedule 1 inserts Subparagraph 4C into Schedule 6 of IAA 1999 to clarify that a person whose registration is suspended under paragraphs 4AA or 4B is not to be treated as a registered person for the purposes of section 84 IAA 1999. It also makes provisions for the way in which the Commissioner shall record the suspension of a person's registration (or where such suspension is ceased).

305 Paragraph 7 of Schedule 1 amends section 84 of IAA 1999 by inserting a new subsection (3C) which provides that a person's entitlement to meet the definition of a qualified person by virtue of being supervised under section 84(2)(e) of the IAA 1999 is subject to new section 84A and regulations under new section 84B.

306 Paragraph 8 of Schedule 1 inserts new subsection 84A to the IAA 1999 to provide circumstances under which a person may not be entitled to provide immigration advice under supervision as a qualified person by virtue of section 84(2)(e) IAA 1999. Circumstances include, by reference to sanctions under the IAA 1999, where a person is disqualified under paragraph 4 of Schedule 6 (convicted of certain immigration offences), suspended under new paragraph 4AA (on grounds of risk of serious harm) of Schedule 6 IAA 1999, or 4B of Schedule 6 IAA 1999 (charged with certain offences).

307 Subsection 84A(2) provides that a person is not entitled to provide immigration advice or services under supervision, where upon appealing a decision by the Commissioner to cancel their registration under paragraph 4A(e) of Schedule 6 IAA 1999 (no longer competent or otherwise unfit) they were found by the Commissioner to have met the criteria of condition A (risk of causing serious harm) within new section 87(3AB) IAA 1999, causing the Commissioner to cancel their registration with immediate effect. The prevention from acting under supervision as a result of the notice given under section 87(3AB) IAA 1999 lasts for 12 months from the time specified in the notice which is the "relevant period" defined in new paragraph 84A(3).

308 Subsection 84A(4) establishes that preventing a person from acting under supervision as a result Commissioner's decision under section 87(3AB) IAA 1999 can be disapplied where either the Commissioner decides to register the person or continue their registration, or if the cancellation of that person's registration is overturned on appeal (unless the effect of a further appeal reinstates that person's registration cancellation).

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

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

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

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

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

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

315 Subsection 84B(1) grants the Secretary of State the power to specify, in regulations, the professional sanctions which will prevent someone from acting under supervision under section 84(2)(e) IAA 1999. Such sanctions include, but are not limited to, those with the effect of disqualifying or suspending a person from practising as a member of a 'relevant profession'. The power for the Secretary of State to specify these sanctions in regulations will ensure that the list of applicable sanctions is kept up to date in line with any future changes to the regulatory arrangements of "designated professional bodies", or "designated qualified regulators".

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

317 Paragraph 8 of Schedule 1 also inserts new section 84B into the IAA 1999. Subsection 84B(3) sets out the definition of "professional sanction", "relevant disciplinary body" or "relevant profession".

318 Paragraphs 9, 10 and 11 of Schedule 1 insert new provisions into the IAA 1999 conferring powers on the Commissioner to impose monetary penalties on persons providing immigration advice or immigration services.

319 Paragraph 9 inserts six new sections after section 92B (92C to 92H) into Part 5 of the IAA 1999 to allow the Commissioner to impose monetary penalties on people providing immigration advice or immigration services.

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

- registered at the time it happened, has failed to comply with the Code of Standards, their duty to assist with the investigation of a complaint, any other requirement under Part 5 of the IAA 1999 or obstructing the Commissioner without reasonable excuse;
- who is not registered has failed to comply with the duty imposed on them by paragraph 6(2) of Schedule 5 (a duty to assist with the investigation of a complaint); or
- who was unqualified to do so has provided or advertised immigration advice or services (offences under sections 91 and 92B).

321 Subsection 92C(9) further provides that the penalty may be either fixed or variable, limited to stated amounts, and amended by regulations.

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

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

324 Section 92F sets out the enforcement of penalty notices in the different jurisdictions of the UK.

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

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

327 Paragraph 10 of Schedule 1 amends section 166(5) of the IAA 1999 to provide that the regulations amending the amount of a fixed penalty notice and the maximum amount specified in a variable penalty notice are subject to the affirmative procedure.

328 Paragraph 11 of Schedule 1 amends Schedule 5 to the IAA 1999 to add reference to the new power in 92C to impose monetary penalties for breaching the duty imposed by paragraph 6(2) underneath paragraph 6(3). It also adds reference to the new power in 92C to impose monetary penalties for breaching the Code or otherwise failing to comply with requirements imposed by or under the determination of complaints underneath paragraph 9(1).

329 Paragraph 12 of Schedule 1 introduces new subsection 93A into Part 5 of the IAA 1999. It grants a power for the Secretary of State to specify, by order, the fees chargeable by the Commissioner to their registered organisations for exercise of various regulatory functions.

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

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

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

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

333 Subsection 93A(3) sets out that the order may result in fees being charged in respect of a function which exceed the costs of exercising that function.

334 Subsection 93A(4) establishes that the Secretary of State, in specifying the amount of fees (noting that the fees charged may exceed the costs of exercising the function), may have regard to either (1) the costs of exercising the function, or (2) the costs of exercising any other function of the Commissioner.

335 Subsection 93A(6) confirms that "registration" within this section means registration with the Commissioner under section 85 IAA 1999.

336 Paragraph 13 of Schedule 1 substitutes paragraph 5 of Schedule 6 of the IAA 1999 with new paragraph 5 which states that no application made under section 93A will be entertained unless it is accompanied by the appropriate fee or covered by a fee waiver.

337 Paragraph 14 of Schedule 1 amends Schedule 5 to the IAA 1999 to add paragraph 5(3)(ba), the provision of immigration advice or immigration services by a person not regulated by the Commissioner, to the list of complaints in paragraph 5(3) that can be investigated.

338 It also amends paragraph 6(2) and adds new sub-paragraph 6(2A) to provide that the subject (whether an individual or body) of an investigation must assist the Commissioner and comply with any reasonable requirement, even if the individual has left since the immigration advice or services to which the complaint relates were provided and is no longer regulated by the Commissioner.

339 It further inserts (1)(f) into paragraph 9 to allow the Commissioner to order unregulated persons to refund all or part of the fees they charged for the immigration advice or immigration services to which the complaint relates and/or to pay an amount specified by order as compensation in respect of any loss, inconvenience or distress suffered as a result of the provision of the advice or services.

340 It inserts a new paragraph 9(1C) into Schedule 5 which allows the Commissioner to order a body which was regulated at the time to which the complaint relates, and is no longer regulated, to do the same. It clarifies that a body is relevant if the adviser was acting as the employee, officer, member or partner of the body when providing the immigration advice or immigration services to which the complaint relates, and that "officer" means a director, manager, secretary or other similar officer of the body.

341 Paragraph 14 of Schedule 1 also inserts new subparagraphs 9(1D), 9(1E) and 9(1F) into Schedule 5 of the IAA 1999 which specify that the amount that may be ordered to be refunded or paid in respect of a complaint must not exceed £250,000, that this amount may be amended by the Secretary of State by regulations and that the Commissioner can specify a deadline for the refund or payment to be made.

342 Paragraph 14(5) of Schedule 1 inserts new paragraph 9A to 9C into Schedule 5 of the IAA 1999. Paragraph 9A provides that the Commissioner must notify the person of an intention to order them to refund fees or pay compensation and consider any representations and objections before any order is made.

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

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

345 Paragraph 15 of Schedule 1 adds the provision in paragraph 9(1E) of Schedule 5 to the IAA 1999 (allowing the Secretary of State to make regulations to change the amount that may be ordered to be refunded or paid in respect of a complaint), to regulations that are subject to the affirmative procedure.

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

347 Paragraph 16 of Schedule 1 amends Schedule 5 of the Immigration and Asylum Act 1999 to set out that the Commissioner is to hold office for a term not exceeding five years. This does not affect paragraph 12(3) which states that the Commissioner is eligible for re-appointment when their term of office ends. This amendment is needed because there is currently no power to make short term or interim appointments should the need arise in line with other Public Appointments.

348 The current regulatory regime is based upon there being an Immigration Services Commissioner and Deputy in post. Therefore, paragraph 17 of Schedule 1 makes an amendment to paragraph 16(1) of Schedule 5 to the 1999 Act to set out that the Commissioner may appoint a person to act as Deputy Commissioner. Should both the roles be vacant

simultaneously, the majority of ISC regulatory functions could not be discharged. Paragraphs 17A(1) and (2) provide that a member of the Commissioner's staff nominated by the Secretary of State may act in the Commissioner's place in certain circumstances. This provision is not designed to replace the Secretary of State's provision to appoint a Deputy Commissioner, but to be used in extremis to avoid a gap in regulatory oversight.

Deportation etc

Section 44: Detention and exercise of functions pending deportation

349 This section amends sub-paragraph 2 of paragraph 2 of Schedule 3 to the Immigration Act 1971 which provides the power to detain someone who is subject to deportation action on the grounds their deportation is considered conducive to the public good. It confirms that the Home Office may detain someone liable to deportation from the point at which the Home Office serves notification that deportation is being considered.

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

351 The section also amends section 141(7)(c)(ii) and Regulation 2 of the Immigration (Collection, Use and Retention of Biometric Information and Related Amendments) Regulations 2021. This aligns the power to capture facial images and fingerprints with the power to detain people who are subject to section 44. This means the Home Office will be able to capture their biometrics at the time they are detained.

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

EU Settlement Scheme

Section 45: EU Settlement Scheme: rights of entry and residence etc.

353 Section 45 makes provision for all European Union (EU), other European Economic Area (EEA) and Swiss nationals, and their family members, with leave to enter or remain in the UK granted under the EU Settlement Scheme (EUSS) – which enables them to continue living in the UK now that the UK has left the EU –to be treated as being a beneficiary of the relevant Citizens' Rights Agreement.

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

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

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

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

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

359 Subsection (7) explains some legal terms used in the section.

Conditions on leave and bail

Section 46: Conditions on limited leave to enter or remain and immigration bail

360 This section amends section 3 of the Immigration Act 1971 to insert electronic monitoring, curfews, inclusion zones, exclusion zones and any condition the Secretary of State thinks fit to the list of conditions that can be attached to a grant of limited leave to enter or remain. Subsection (1A) only permits those conditions be imposed if the person poses a threat to national security, public safety or has committed a particular crime (subsection (1) and (2)).

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

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

Powers to take biometric information

Section 47: Powers to take biometric information

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

364 In addition, subsection (2) inserts a new subsection (5)(g) into section 141 of the IAA 1999 to create a power for the Secretary of State to make regulations to enable other types of people to be authorised for the taking of biometric information.

Employment

Section 48: Extension of prohibition on employment to other working arrangements

365 Section 48 amends the Immigration, Asylum and Nationality Act 2006 ("IANA 2006") to make provision for changes in employment practices. Subsection (1) provides that this section amends section 15 of the IANA 2006. Subsection (2) amends the heading preceding section 15.

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

367 Subsection 14A(2) provides that reference to employment in sections 15 to 24 of the IANA 2006 includes the engagement mentioned at paragraphs (a) or (b) of subsection (1).

368 14A(3) defines "worker's contract" to include a contract under which an individual undertakes to perform work for person A or another person regardless of whether the other person is identified in the contract and where Person A is not a client or customer of any business or professional undertaking of individual A. It also defines an "individual sub-contractor" to include an individual who has entered into a contract with a person B to provide work or services and where person B has entered into a contract with a third party to provide for or arrange the work or services, but the individual has not.

369 Subsection 14A(3) also defines an "online matching service" to mean a person who keeps a register of service providers to match them with potential clients, provides an online service where potential clients can submit enquiries in order to be matched with suitable service provides and where the "online matching service" charges a fee or a commission in return. It also defines "service provider" to include a person providing or seeking to provide work or services in exchange for remuneration.

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

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

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

373 Subsection (4) of the Act inserts Section 15A into the IANA 2006. Subsection 15A(1) provides that section 15A(4) applies where a person (A) employs an individual to provide work or services or is contracted to provide or arrange work or services and enters into contract under which another person provides or arranges the work or services or part of it.

374 Subsection 15A(2) provides that section 14A(1)(c) (online matching services) does not apply in relation to section 15A(1) and instead section 15A (3) and (4) applies in relation to online matching services.

375 Subsection 15A(3) provides that section 15A(4) applies where a person A is an online matching service who provides details of another person who is a service provider to potential clients and as a result of being matched by person A, the service provider enters into a contract with a client to provide work or services.

376 Subsection 15A(4) has the effect that for the purposes of section 15, a person (A) will be treated as employing any individual (B) who personally provides the work or services including in circumstances where A is not in a contractual relationship with B or A does not know that B is providing the work or services.

377 Subsection 15A(5) provides that section 15A(4) applies in circumstances where A is contracted to provide or arrange for the provision of work or services, regardless of whether the contract for the provision of work or services is the first contract or whether there is any other contract in a chain of contracts.

378 Subsection 15A(6) provides that section 15A does not affect the liability of any other employer under section 15.

379 Subsection 15A(7) provides that where there is reference to a person employing another person in section 15, 16, 17, 23 and 24 this will now include a reference to a person who is treated as such by virtue of section 15(A)(4).

380 Subsection 15A(8) confirms that "online matching services" and "service provider" have the same meaning as that defined in section 14A.

381 Subsection (5) of the Act amends Section 25 of the IANA 2006 by inserting the words "subject to section 14A and 15A and delete "whether" to the end of the paragraph and inserts paragraph (ba) which provides that reference to a contract includes a contract that is express (oral or in writing) or implied.

Appeals

Section 49: Timeframe for determination of appeal brought by appellant receiving accommodation support

382 Section 48 will introduce a statutory timeframe for the determination of supported asylum appeals in the Tribunal, where that support is being provided in the form of temporary asylum accommodation.

383 This section will insert section 86A 'Timeframe for determination of appeal under section 82(1)(a) where appellant is receiving accommodation support' after section 86 of the Nationality, Immigration and Asylum Act 2002 ("NIAA 2002").

384 Section 86A(1) specifies that the statutory timeframe applies to appeals against asylum and humanitarian protection refusal decisions brought by a person to whom, at the time the appeal is instituted, accommodation is being provided by the Home Office under section 95 or 98 of the IAA 1999.

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

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

Section 50: Timeframe for determination of certain appeals brought by non-detained appellants liable to deportation

387 Section 50 will introduce a targeted statutory timeframe for the determination of appeals in the Tribunal from non-detained persons who have been convicted of an offence and who are subject to a deportation decision.

388 This section will insert section 86B 'Timeframe for determination of appeal brought by certain non-detained appellants liable to deportation' after section 86A of the NIAA 2002.

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

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

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

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

393 Section 50(2) and (3) amend the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 (S.I. 2020/61) and the Immigration (European Economic Area) Regulations 2016 (S.I. 2016/1052) to apply the new section 86B in circumstances where an appeal is brought under those Regulations by a non-detained person who has been convicted of an offence and who is liable to deportation.

Refugee Convention

Section 51: Refugee Convention: particularly serious crime

394 Section 51 amends section 72 of the NIAA so as to define a sexual offence under Schedule 3 Sexual Offences Act (SOA) 2003 as a 'particularly serious crime' for the purposes of excluding refugees from the protection from refoulement, in line with Article 33(2) of the Refugee Convention.

395 Subsection (2) inserts new subsection 5ZA into section 72 of the NIAA2002. Subsection 5ZA presumes that an individual who receives a conviction for an offence listed in Schedule 3 of the Sexual Offences Act 2003, has received a conviction for a particularly serious crime for the purposes of Article 33(2) of the Refugee Convention. The new subsection (5ZA)(b) means that if an individual is convicted by a final judgment of a Schedule 3 offence but the offence already meets the provision set out in subsection (2) of section 72 of the NIAA 2002, then subsection (5ZA)(a) will not apply.

396 Subsection (2) also inserts a new section (5ZB) into section 72 of the NIAA 2002. Subsection (5ZB) presumes that an individual who receives a conviction outside of the UK for an offence that would have constituted a Schedule 3 offence, had it been committed in the UK, is convicted of a particularly serious crime for the purposes of Article 33(2) of the Refugee

Convention. The new subsection (5ZB)(c) means that if an individual is convicted by a final judgment of an equivalent of a Schedule 3 offence outside of the UK, but the offence already meets the provision set out in subsection (3) of section 72 of the NIAA 2002, then subsection (5ZB)(a) and (b) will not apply.

397 Subsection (3) inserts a new subsection (5B) into section 72 of the NIAA 2002. This creates a presumption that any individual who has been convicted of a particularly serious crime under (5ZA) or (5ZB) constitutes a danger to the community of the UK.

398 Subsections (4), to (8) make consequential changes to section 72 of the NIAA 2002, to reflect the new provisions inserted by new subsections (5ZA) and (5ZB).

Part 3: Prevention of Serious Crime

Offences relating to things for use in serious crime

Section 52: Articles for use in serious crime

399 Section 52 creates two new criminal offences of possessing any specified article where the person possessing the article intends, or has reasonable grounds to suspect, that it will be used in connection with any serious offence; and of importation, manufacture, adaptation, supply or, offering to supply a specified article where there are reasonable grounds to suspect that the article will be used in any serious offence. For the purposes of these criminal offences, "serious offence" means the serious offences specified in Schedule 1 to the Serious Crime Act 2007. These include offences such as fraud, money laundering, terrorism, and drug and people trafficking.

400 Subsections (1) and (2) create the offences of possession and importation, manufacture, adaptation, supply or offering to supply an item (listed in section 53 (1)), referred to as a 'relevant article', in circumstances which give rise to a reasonable suspicion that the article will be used in connection with any serious offence.

401 Subsection (3) provides a defence for a person charged with one of the above offences if they can prove that they did not intend or suspect that the article would be used in connection with a serious offence.

402 Subsection (4) explains that a court can assume a person possessed the relevant article if there is proof that (a) the accused was in the same location as the relevant article, or (b) the relevant article was present in the location where the accused resided, or a location that the accused used habitually other than as a member of the public. The court cannot assume possession in this way where the accused shows they did not know of the article's presence on the premises or that they had no control over it.

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

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

405 Subsection (7) defines 'relevant article' as that set out in section 53 and 'serious offence' as those offences specified in Part 1 of Schedule 1 to the Serious Crime Act 2007 for England and Wales, Part 1A of Schedule 1 to the Serious Crime Act 2007 for Scotland and Part 2 of Schedule 1 to the Serious Crime Act 2007 for Northern Ireland. These offences include offences such as people trafficking, drug trafficking, bribery, and armed robbery.

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

Section 53: Section 52: meaning of "relevant article"

407 Section 53 defines the article ("relevant article") for the purposes of the offence in section 52. Those articles are: a template to make 3D printed firearm components; an encapsulator; a tablet press; and a vehicle concealment.

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

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

Section 54: Confiscation of assets

410 Section 53 amends the Proceeds of Crime Act 2002 (POCA), which adds 'offences relating to things for use in serious crime' into the relevant territorial schedules, as set out in subsection (2) (3) and (4). This means the 'relevant articles' listed in section 53 may be confiscated under POCA.

Serious crime prevention orders

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

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

413 Sections 55 to 59 make a number of amendments to the SCA 2007 in relation to SCPOs and will apply to England and Wales with the exception of section 56, interim SCPOs, which extends UK wide in terrorism related cases.

Section 55: Electronic monitoring requirements

414 Section 55 inserts new sections 5B, 5C and 5D into the SCA 2007 to provide the courts with the express legislative power to impose an electronic monitoring requirement as a part of an SCPO.

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

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

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

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

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

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

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

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

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

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

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

Section 56: Interim serious crime prevention orders

426 Section 56 introduces a new provision under the SCA 2007 for Interim Serious Crime Prevention Orders (ISCPOs). These interim orders provide the High Court with a power to impose immediate restrictions or requirements to protect the public by preventing, restricting or disrupting the person's involvement in serious crime, pending the determination of a full SCPO application. Section 56 inserts new section 5E, "interim serious crime prevention orders" (ISCPO) into the SCA 2007.

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

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

429 New section 5E(2) stipulates that the court may exercise this power if the court considers it just to do so. It is a matter for the court to determine whether it is just to make an interim order. For example, the court may make an interim order in a case where it is satisfied that this is necessary for the purpose of protecting the public from immediate harm pending the determination of the application for the full SCPO.

430 New section 5E(3) allows the court to impose prohibitions, restrictions or requirements deemed appropriate by the court to protect the public by preventing, restricting or disrupting involvement by the person subject to an ISCPO in serious crime. This is the same as for a full SCPO.

431 New section 5E(4) incorporates sections 5 to 5D of the SCA 2007 – the express power to impose electronic monitoring - in relation to ISCPOs.

432 New section 5E(5) stipulates that an ISCPO may only be made if the application for the interim order is made at the same time as or after the main application for a full SCPO.

433 New section 5E(6) and (7) defines the terms ISCPO, main application and the person who is the subject of an ISCPO.

434 Subsection 56(3) inserts New section 5F(1), which permits applications for ISCPOs or their variation to be made without notice (ex parte) to the subject if notice would likely to prejudice the intended outcome of the order.

435 New section 5F(2) requires the courts to provide the subject of an 'ex parte' order an opportunity to make representations about the order as soon as reasonably practicable and at a hearing with notice of the hearing provided to the subject of the order in accordance with court rules.

436 New section 5F(3) prohibits the dismissal of an application to vary or discharge an ex parte ISCPO unless the person who makes the application has had a chance to make representations at a hearing of which notice has been given to the person in accordance with rules of court.

437 Subsection 56(3) inserts new section 8AA, which restricts applications for ISCPOs to the relevant application authority as defined in section 10(4) of the SCA 2007, in connection with the main application for an SCPO. Therefore, only the relevant applicant authorities can make interim SCPO applications, and they must be linked to an ongoing full SCPO case. This safeguard ensures that ISCPOs are not made in isolation but as part of the full SCPO application process.

438 Subsection 56(4) inserts new section 10A(1), which specifies that the subject of an ISCPO is bound by the order (or its variation) if the subject is present or represented at the court at the time the order is made or a notice setting out the terms of the ISCPO is served on the subject (in relation to an order made without notice) as soon as reasonably practicable.

439 Subsection 56(3) inserts new section 10A(2) and (3), which requires that delivery of the notice of the ISCPO must be in person unless the court permits alternative methods and served no later than 7 days after the order was made. Law enforcement agencies may enter any premises (if necessary by force) where there are reasonable grounds to believe that the person is present, so as to search for the person and serve the order.

440 New section 10A(4) stipulates that any method that the court allows can be used if personal service has not been possible.

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

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

Section 57: Applicants for making of orders and interim orders.

443 Section 57 replaces section 8 of the SCA 2007 (which provides a list of applicants who can apply for an SCPO and ISCPO) to extend the list of parties who may apply to the High Court in England and Wales for an interim or full SCPO.

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

a. the Director General of the National Crime Agency;

b. the Commissioners of His Majesty's Revenue and Customs;

c. a chief officer of police;

d. the Chief Constable of the British Transport Police; or

e. the Chief Constable of the Ministry of Defence Police.

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

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

447 Subsection 57(3) amends section 10(4) of the SCA 2007, which provides the definition of "the relevant applicant authority", to include any other person set out in section 8(1) who applied for an order.

448 Subsection 57(4) amends section 27 (power to wind up companies: England and Wales) of the SCA 2007 by substituting a new Section 1A to extend the power to those persons mentioned in section 8(1)(a)(iii) to (vii) to submit a petition to the court for the winding up of a body (company, partnership, or relevant body). A petition can only be submitted if the body has been convicted of an offence by failing to comply with an SCPO as set out in section 25 of the SCA 2007 and the applicant considers it would be in the public interest for the company to be wound up. For example, the Director General of the NCA could submit an application to the court to wind up a company if the Director General considered it to be in the public interest.

449 Subsection 57(5) amends Schedule 2 to the SCA 2007, which provides for the functions of the applicant authorities that can make applications for orders. The amendments confer the relevant functions on the Director General of the NCA, Commissioners of HMRC and the chief constables of BTP and MDP. These functions include applying for SCPOs, or the variation or discharge of an order; appearing on applications by others for the variation or discharge of an order; having the conduct of or appearing in any other proceedings about an SCPO; providing advice about any proceedings or possible proceedings in connection with an SCPO; or anything for the purposes of, or in connection with, these functions. Special provision has to be made because functions in relation to SCPOs fall outside the usual functions of the persons concerned.

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

Section 58: Notification requirements

451 Section 58 amends the SCA 2007 to provide that all SCPOs made in England and Wales automatically impose a prescribed set of notification requirements. When someone is subject to notification requirements, they must provide the police or applicant authorities with certain information, such as their home address or email address. This information allows the police and other authorities to monitor an offender and to manage any ongoing risk that they pose.

452 Under sections 1, 5 and 19 of the SCA 2007, SCPOs can include any requirements which the court considers appropriate for the purpose of protecting the public by preventing, restricting, or disrupting involvement by the person concerned in serious crime. Section 58 standardises the information received and recorded by law enforcement agencies in relation to those subject to an SCPO – both individual persons and bodies corporate. This will provide continuity in the management of persons subject to an SCPO, particularly as they move between different geographical areas, or between different stages of the criminal justice system, such as between custody and being on licence in the community.

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

454 New section 15A sets out the requirement that each SCPO must specify an authority to whom notifications under new Schedule 1A of the SCA 2007 are given. The authorities to which notifications can be given in England and Wales are those detailed in section 8(1)(a) of the SCA 2007 (as amended by section 57 of the Act).

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

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

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

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

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

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

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

462 Paragraph 2(5) details the notifiable information, which includes the person's name (including aliases) and address; the person's telephone numbers and e-mail addresses; usernames the person uses to access social media, or that identify the person on social media; names used to access online video games with messaging functionality, or that identify the person on these

games; identifying information of relevant motor vehicles; specified financial information; specified information about identification documents; and the name and address of the person's employers. Sub-paragraph (5)(j) allows for the Secretary of State to add prescribed notification requirements via regulations. Sub-paragraph (6) defines the meaning of the various notification requirements under sub-paragraph (5).

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

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

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

466 Subsection (7) introduces Schedule 2, which makes consequential amendments to the SCA 2007.

Section 59: Orders by Crown Court on acquittal or when allowing an appeal

467 Section 59 amends the SCA 2007 so as to extend to the Crown Court in England and Wales, the power to impose an SCPO on acquittal or when allowing an appeal.

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

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

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

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

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

Schedule 2: Interim serious crime prevention orders: consequential amendments

473 Schedule 2, which is introduced by section 56, outlines the consequential amendments in the SCA 2007 for ISCPOs.

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

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

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

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

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

479 Paragraphs 13 and 14 of Schedule 2 amend sections 20 to 21 of the SCA 2007 to extend these powers to ISCPOs. Sections 20 to 21 of the SCA 206 empower the Crown Court to make, vary or replace a SCPO upon conviction or sentencing to prevent future involvement in serious crime.

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

481 Paragraphs 20 to 22 of Schedule 2 amend section 23 and 24A of the SCA 2007 to extend these provisions to ISCPOs. Sections 23 and 24 of the SCA 2007 provide the right to appeal decisions relating to SCPOs made by the relevant Court.

482 Paragraphs 23 to 25 of Schedule 2 amend section 27 to 28 of the SCA 2007 to extend these powers to ISCPOs. Sections 27 to 28 of the SCA 2007 provide the power to the applicant authority to petition for the winding up of companies, partnerships and bodies corporate, convicted of breaching an SCPO and provided it is in the public interest to do so.

483 Paragraphs 26 to 28 of Schedule 2 amends section 30 to 32 of the SCA 2007 to extend these provisions to ISCPOs. Sections 30 to 32 set out how SCPOs apply to bodies corporate, partnerships, and unincorporated associations, ensuring that the orders remain in effect despite changes in the structure/personnel of these companies.

484 Paragraph 29 of Schedule 2 amends section 34 of the SCA 2007 to extend this provision to ISCPOs. Section 34 of the SCA 2007 limits the terms that can be included in a SCPO for service providers.

485 Paragraphs 30 to 32 of Schedule 2 amend section 35 and 36A of the SCA 2007 to extend these to both SCPOs and ISCPOs. Sections 35 to 36 of the SCA 2007 establish that proceedings relating to SCPOs in both the High Court and Crown Court are civil proceedings and apply the civil standard of proof (balance of probabilities).

486 Paragraph 33 of Schedule 2 amends section 38 of the SCA 2007 to extend this to ISCPOs. Section 38 of the SCA 2007 states that if a person complies with the SCPO to provide information/documents, they do not breach any obligation of confidence.

487 Paragraphs 34 to 36 of Schedule 2 amend section 39 to 41 of the SCA 2007 to extend these to ISCPOs. Sections 39 to 41 of the SCA 2007 address compliance with SCPOs, allowing law enforcement agencies to retain documents obtained under SCPOs for legal proceedings or enforcement purposes.

488 Paragraph 37 of Schedule 2 amends Section 43 adding ISCPO as a defined term.

489 Paragraph 38 of Schedule 2 creates further amendments to Schedule 2 extending SCPO functions of application authorities to ISCPOs.

Part 4: Miscellaneous and General

Miscellaneous

Section 60: Validation of fees charged in relation to qualifications

490 Section 60 establishes retrospective power for the charging of fees for services related to the comparability, recognition and assessment of qualifications obtained outside and within the United Kingdom. It has been determined that these fees in whole or part require, or may require, a statutory basis. This statutory basis has not been in place for a part or the whole of the period of their being charged by several government departments, currently the Home Office and the Department for Education.

491 Establishing retrospective power for these fees to be charged removes the possibility of customers requesting refunds for fees paid for services, the benefits of which they have fairly received.

492 This section establishes that fees meeting the conditions in subsections (2)-(4) are taken to have been lawfully charged. Under subsection (6) the fees may have been charged by the Secretary of State or persons acting through arrangements with the Secretary of State, for example an external supplier under a contract.

General

Section 61: Financial provisions

493 This section sets out the financial provisions for the Bill.

Section 62: Consequential and minor provision

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

Section 63: Regulations

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

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

497 Subsection (2) explains that any regulations made using powers granted to the Secretary of State by this Bill must be made by statutory instrument (to which the Statutory Instruments Act 1946 will apply).

498 Subsection (3) sets out that sections 15(3), 36(8), 53(3) and 62(1) require a draft of the instrument to be laid before and approved by both Houses of Parliament before coming into force (the affirmative resolution procedure).

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

500 Subsection (5) confirms that this section does not apply to regulations made under section 65 (commencement).

501 Subsection (6) sets out the meaning of "primary legislation".

Section 64: Extent

502 This section sets out the extent of the provisions in this Act.

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

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

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

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

Section 65: Commencement

507 This section explains when the provisions of the Act will come into force.

508 Subsections (1) and (2) provide that the Secretary of State may by regulations appoint the day or days on which the provisions in this Act will come into force, with the exception of those provisions which came into force upon Royal Assent or two months after that date (see subsections (3) to (5)).

509 Subsection (3) sets out which provisions of this Act came into force upon Royal Assent.

510 Subsection (4) sets out the provisions of this Act which come into force two months after Royal Assent.

511 Subsection (5) sets out that the Secretary of State may make transitional or saving provisions by regulations when this Act gains Royal Assent.

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

Section 66: Short title

513 This section establishes the short title of the Act as the Border Security, Asylum and Immigration Act 2025.

Commencement

514 Section 65(3) provides for those sections which came into force on Royal Assent of this Act. The regulation making powers set out in section 63 also came into force on Royal Assent. The remaining provisions will be brought into force by commencement regulations made by the Secretary of State.

Annex A – Territorial extent and application in the United Kingdom

Provision	England	Wales	Scotland	Northern Ireland
	Extends to E & W and applies to England?	**Extends to E & W and applies to Wales?**	**Extends and applies to Scotland?**	**Extends and applies to Northern Ireland?**
Sections 1-12	Yes	Yes	Yes	Yes
Sections 13-21	Yes	Yes	Yes	Yes
Sections 22-29	Yes	Yes	Yes	Yes
Sections 30-32	Yes	Yes	Yes	Yes
Sections 33-36	Yes	Yes	Yes	Yes
Sections 37-38	Yes	Yes	Yes	Yes
Section 39	No	No	Yes	No
Sections 40-42	Yes	Yes	Yes	Yes
Section 43 and Sch 1	Yes	Yes	Yes	Yes
Section 44	Yes	Yes	Yes	Yes
Section 45	Yes	Yes	Yes	Yes
Section 46	Yes	Yes	Yes	Yes
Section 47	Yes	Yes	Yes	Yes
Section 48	Yes	Yes	Yes	Yes
Sections 49-50	Yes	Yes	Yes	Yes
Section 51	Yes	Yes	Yes	Yes
Sections 52-54	Yes	Yes	Yes	Yes
Sections 54-59 and Sch 2	Yes	Yes	No (except for terrorism cases under section 56; electronic monitoring under section 55; and breach of an interim SCPO in non-terrorism cases under section 56)	No (except for terrorism cases under section 56; electronic monitoring under section 55; and breach of an interim SCPO in non-terrorism cases under section 56)
Section 60	Yes	Yes	Yes	Yes

Annex B – Hansard References

515 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Commons		
Introduction	30 January 2025	
Second Reading	10 February 2025	Vol 762 Col 58
Public Bill Committee	27 February 2025	First Sitting
		Second Sitting
	4 March 2025	Third Sitting
		Fourth Sitting
	6 March 2025	Fifth Sitting
		Sixth Sitting
	11 March 2025	Seventh Sitting
		Eighth Sitting
	13 March 2025	Ninth Sitting
		Tenth Sitting
	18 March 2025	Eleventh Sitting
		Twelfth Sitting
Report and Third Reading	12 May 2025	Vol 767 Col 73
House of Lords		
First Reading	13 May 2025	
Second Reading	2 June 2025	Vol 846 Col 592
Committee Stage	26 June 2025	Vol 847 Col 392
	8 July 2025	Vol 847 Col 1220 Vol 847 Col 1284
	10 July 2025	Vol 847 Col 1477 Vol 847 Col 1511
	3 September 2025	Vol 848 Col 798 Vol 848 Col 858
	8 September 2025	Vol 848 Col 1132
	13 October 2025	Vol 849 Col 20 Vol 849 Col 101
Report Stage	28 October 2025	Vol 849 Col 1279
	3 November 2025	Vol 849 Col 1657
	5 November 2025	Vol 849 Col 1931

	11 November 2025	Vol 850 Col 147 Vol 850 Col 231
Third Reading	17 November 2025	Vol 850 Col 548
House of Commons		
Commons Consideration of Lords Amendments	19 November 2025	Vol 775 Col 789
House of Lords		
Lords Consideration of Commons Amendments and Reasons	24 November 2025	Vol 850 Col 1122
Royal Assent	2 December 2025	Vol 776 Col 819 Vol 850 Col 1681

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