These notes refer to the Immigration and Asylum Act 1999 (c.33) which received Royal Assent on 11 November 1999

IMMIGRATION AND ASYLUM ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part I: Immigration: general

Sections 1 and 2: Leave to enter or remain in the United Kingdom

20. Under the current provisions of the 1971 Act, anyone who is not a British citizen, or a national of a Member State of the European Union (EU) (and other nationals of the European Economic Area (EEA)) exercising their European free movement rights, needs to be granted leave to enter or leave to remain (permission to stay) in order lawfully to enter into, or remain in, the United Kingdom (unless exempt). At present, leave to enter has to be given in writing by an immigration officer at a port of entry or, in cases where the individual is already in the country, leave to remain has to be given by the Secretary of State, in practice by Immigration and Nationality Directorate (IND) caseworkers acting on his behalf.

21. In addition, once a person requiring leave departs from the Common Travel Area (CTA – an area of free movement which comprises the United Kingdom, the Republic of Ireland, the Channel Islands and the Isle of Man), any leave that they may have been granted lapses. If such an individual wishes to come back to the United Kingdom then they have to be granted fresh leave to enter by an immigration officer on their return.

22. At present under section 4(1) of the 1971 Act a person can only be notified of the conditions and time limits attached to their stay by way of a written notice. This normally takes the form of a stamp in their passport. The effect of the powers conferred under sections 1 and 2 is that, while an individual will still need to obtain either leave to enter the United Kingdom or leave to remain in the United Kingdom, this leave need not necessarily be granted in writing and, in the case of leave to enter, may be granted in advance of arrival. By providing for a more flexible legislative framework, the sections provide the scope for existing procedures to be revised and updated and will also allow technological developments to be utilised in the future.

Section 1: Leave to enter

23. Section 1 introduces a new section 3A into the 1971 Act. Subsection (1) of the new section enables the Secretary of State by order to make additional provision about the giving, refusing, or varying of leave to enter the United Kingdom. The order is to be made by statutory instrument subject to affirmative resolution procedure. This means that a draft of the order has to be laid before Parliament, debated and approved by both Houses before it is made. Taking a power to make secondary legislation will enable the Secretary of State to respond to future developments, in particular technological changes.

24. Subsection (2) of the new section sets out what may in particular be contained in an order under subsection (1). Subsection (2)(a) enables provision to be made allowing individuals to be granted or refused leave to enter before their arrival in the United Kingdom. It is envisaged that this power might be used, for example, for applications

made at British Embassies or High Commissions overseas. A person with advance leave would be able to pass through the control without further detailed examination by an immigration officer on arrival.

25. Subsection (2)(b) will allow the Secretary of State to specify the form or manner in which leave to enter will be granted, refused or varied. It is anticipated that technological developments will allow other ways of granting leave in the future that do not rely on the traditional passport endorsement, for example, smart card technology which could be used to give and record leave.

26. Subsection (2)(c) will allow the Secretary of State to impose conditions with respect to leave given by reason an order under subsection (1) of the new section. It may be necessary, for example, if leave is given in a particular form, to specify conditions which are to be treated as applying to that leave by operation of law, such as a requirement to report to the police, or not to take employment.

27. Subsection (2)(d) would allow an individual to leave the United Kingdom and then re-enter it using his continuing leave to enter (for the duration of its validity), without having to obtain fresh leave to enter from the immigration officer.

28. At present, many passengers arriving at United Kingdom sea and airports have a visa or an entry clearance in their passport that has been issued (following completion of an interview with the holder) by an entry clearance officer working at a British Embassy or High Commission abroad. Each holder of a visa or an entry clearance is then re-interviewed by an immigration officer on arrival and given a stamp in their passport giving them leave to enter the United Kingdom. This re-examination at the ports takes time and in many cases is unnecessary. Subsection (3) will allow an order to be laid before Parliament which will provide that in certain specified circumstances the issue of a visa (or another form of entry clearance) will also confer leave to enter on the holder.

29. Subsection (4) enables an order under subsection (3) to make provision about the number of times the clearance is to have such effect as leave to enter; and the conditions which are to be taken to apply to the conferred leave. Subsection (4)(b) enables the order to provide that such an entry clearance can be varied, either by the Secretary of State or an immigration officer, so that the entry clearance no longer has the effect of leave to enter.

30. Subsection (5) provides that only the conditions which can be imposed under section 3 of the 1971 Act, as amended by paragraph 1(1) of Schedule 2 to the Asylum and Immigration Act 1996, can be applied to visas that are acting as leave to enter. Among these conditions are:

- a condition restricting an individual’s employment or occupation in the United Kingdom;
- a condition requiring an individual to maintain and accommodate himself and his dependants without recourse to public funds; and
- a condition requiring him to register with the police.

31. Under section 4(1) of the 1971 Act the power to grant or refuse leave to enter the United Kingdom can only be exercised by an immigration officer; the power to give or refuse leave to remain, or to vary an individual’s leave to enter or remain, can only be exercised by the Secretary of State. Subsection (7) enables the Secretary of State, in circumstances to be set out in an order, also to grant or refuse leave to enter. The aim is to enable IND’s procedures (particularly in asylum cases) to be more efficient, to minimise duplication of effort and to give greater operational flexibility. For example, under the current system one person, a caseworking officer in IND, takes the decision whether to grant or refuse asylum and another, the immigration officer at a port, then has to take a separate decision to grant or refuse leave to enter. It is envisaged that under this new power a single caseworking officer would be able to take both decisions.

32. Subsection (8) provides that when an order is made under subsection (7) above, certain paragraphs in Part I of Schedule 2 to the 1971 Act can be applied in order to give the Secretary of State related powers, for example, to examine an individual to determine whether he required leave to enter the United Kingdom.

Section 2: Leave to remain

33. Section 2 introduces a new section 3B into the 1971 Act. It is designed to allow greater flexibility in the way in which foreign nationals (ie non-British and non- EU/EEA nationals) are given or refused leave to remain.

34. Subsection (1) gives the Secretary of State the power by order to make further provision with respect to the grant or refusal or varying of leave to remain. The power is designed to enable the use in future of new technology to grant, refuse or vary such leave.

35. There are a variety of categories in the Immigration Rules under which people can apply for leave to remain. Where someone has been granted leave as, for example, a visitor and then applies to stay as a student, the length of their leave and the conditions attached to it would have to be changed to enable the individual to stay here as a student. That is, their leave would have to be varied.

36. Under subsection (2), the order may specify the form or manner in which leave to remain may be granted, refused or varied. Paragraph (b) allows the Secretary of State to deem conditions to be attached to leave to remain which has been granted in a particular way under the order. For example, a requirement to report to the police or not to take employment may be imposed.

37. Under the current system, any leave that has been granted to an individual lapses if he leaves the CTA (see paragraph 21 above and section 3(4) of the 1971 Act). Subsection (2)(c) (with subsection (3)) will allow the order to provide that the individual may leave the United Kingdom and then re-enter the United Kingdom, using his continuing permission to stay (for the duration of its validity), without having to obtain a new visa or fresh leave to enter from the immigration officer.

Schedule 14: Consequential amendments

38. Paragraph 2(1) of Schedule 2 to the 1971 Act gives an immigration officer the power to examine any person who arrives in the United Kingdom and sets out the purpose for which such an examination is conducted. At present, if it is concluded that a person is a British citizen, the immigration officer takes no further action. If he is not a British citizen, however, he will be examined to determine whether or not he requires permission to enter the United Kingdom. This permission is called leave to enter. If a person qualifies for leave to enter then the immigration officer will go on to decide the length of the leave and any conditions, such as permission to work, which will apply. Finally, if a person does not qualify for leave to enter then the immigration officer may refuse leave to enter.

39. Paragraph 56 of Schedule 14 will enable an immigration officer to examine those who arrive in the United Kingdom to establish whether they already have leave to enter, either because they have a valid visa which has conferred leave to enter, because they have extant leave (leave which is still valid from a previous entry), or because it has otherwise been granted in advance of arrival.

40. Paragraph 57 amends Schedule 2 to the 1971 Act to give an immigration officer a power to examine those persons who arrive in the United Kingdom with extant leave and extends to them the requirement to submit to further examination (and medical examination in circumstances where a person is seeking leave to enter for a period in excess of six months, or where the individual appears to be in ill-health), where necessary. The immigration officer may re-examine a person to ascertain whether there has been a change of circumstances, among other matters, and may cancel leave where

it is found that the holder no longer qualifies, or suspend it until the examination is complete.

41. Paragraph 58 amends Schedule 2 to the 1971 Act to give the immigration officer a power to require someone who is being examined under paragraph 2A of that Schedule to provide any information that the immigration officer considers necessary in order to conduct the examination.

42. In addition, the person who is being examined under the provisions of paragraph 2A is required to produce a passport or some other form of identity document. They are also required to declare whether they are carrying any documents which may be specified by the immigration officer, for example, a student may be required to produce a letter confirming enrolment at a college.

43. Paragraph 59 extends the power to require a person to submit to medical examination after leave to enter has been granted to include those persons who arrive in the United Kingdom with extant leave.

Section 3: Continuation of leave pending decision

44. Section 3 replaces the equivalent provisions of the Immigration (Variation of Leave) Order 1976 SI 1976/1572 (as amended). When a person applies for variation of his leave before that leave expires, but it then expires before a decision is taken, the leave is automatically extended to the point at which the appropriate period for appealing a refusal expires. This will protect the immigration status of that person and prevent him from becoming an overstayer. A person will not be able to submit further applications during the leave as extended under this section, although they would be able to vary their original application: this is to ensure that all issues raised are covered by one decision and consequently one appeal.

Section 4: Accommodation for those temporarily admitted or released from detention

45. Section 4 provides a power for the Secretary of State to provide facilities for the accommodation of persons granted temporary admission to the United Kingdom or those given temporary release or bail. It does not itself contain any powers to require residence at such accommodation.

46. Existing powers to impose residence conditions on persons granted temporary admission are contained in Schedule 2 to the 1971 Act. Paragraph 62 of Schedule 14 to this Act provides a power to extend, by regulation, the purposes for which residence conditions may be imposed on persons granted temporary admission. It would permit, for example, conditions to be imposed prohibiting residence in one or more particular areas. This might be necessary to prevent potential public order problems or to relieve extreme pressure on local services and facilities in a particular area. It would also permit a condition to be imposed requiring residence in accommodation provided by the Secretary of State under section 4. This would enable reception facilities to be developed to assist the full and rapid consideration of claims. Regulations made as a result of paragraph 62 of Schedule 14 are subject to draft affirmative procedure.

Section 5: Charges

47. This section allows fees to be prescribed for the consideration of applications for leave to remain in the United Kingdom, variation of leave to enter or remain, or the fixing of a stamp in a new or replacement passport or travel document which confirms indefinite leave to enter or remain in the United Kingdom. It replaces, and widens the scope of, a power in section 9(1) of the Immigration Act 1988 for charges to be levied in respect of applications for settlement. When a fee is payable in an individual case, the Secretary of State is not required to consider the application until the fee has been paid. The fee will be payable irrespective of whether the application is granted.

48. The fees are to be prescribed by regulations made by the Secretary of State under this section which, read with section 166, allows different fee levels to be set for different types of case. Regulations may also provide for no fees to be payable in prescribed circumstances, but the Act itself provides (in effect) that a fee is not payable by a person who is making a claim for asylum or for protection under Article 3 of the ECHR; who has had such an application granted and seeks further leave to remain or indefinite leave to remain; or who is a dependant of such a person. The definition of the word "dependant" will also be prescribed in regulations. The section does not permit charges for applicants seeking confirmation of their rights under European Community law. Fee levels for applicants who are required to pay a fee will reflect the full cost of processing their application.

Section 6: Members of missions other than diplomatic agents

49. This section is designed to prevent foreign nationals already in the United Kingdom from evading immigration control by taking a job in a diplomatic mission, thus closing a loophole which exists under current legislation. Under section 8(3) of the 1971 Act, a person is exempt from immigration control for so long as he is a member of a diplomatic mission. Section 8(3A) of the 1971 Act (inserted by the Immigration Act 1988) has the effect that foreign nationals already in the United Kingdom who are offered a job in a diplomatic mission remain subject to control as long as they remain in this country. However, if they travel abroad the current wording of section 8(3A) has the result that they become exempt upon their return simply because they have entered as a member of a diplomatic mission. The section is intended to close this loophole by replacing the existing section 8(3A) with a new one which provides an exemption only if the person was resident outside the United Kingdom and was not present in the United Kingdom when offered a post as a member of the mission; and if he has not ceased to be a member of the mission after taking up the post. The former condition is designed to ensure that locally engaged staff cannot benefit from the exemption. The latter condition is designed to ensure that the conditions for exemption are again met in the event of subsequent re-employment as a member of a mission.

Section 7: Persons ceasing to be exempt

50. This section is intended to ensure that certain persons who have been exempt from immigration control but who would otherwise require leave to enter or remain in the United Kingdom do not remain for more than 90 days once they have ceased to be exempt, unless they have leave to do so. Under the Immigration (Exemption from Control) Order 1972, made under section 8(2) of the 1971 Act, certain personnel of international organisations with a branch in the United Kingdom are exempt from immigration control. In addition, under section 8(3) of the 1971 Act a member of a diplomatic mission is exempt from immigration control. In both cases, members of their family forming part of the household are also exempt. This means that, as they are not subject to any of the provisions of the 1971 Act relating to those who are not British citizens, many persons who cease to be exempt do not commit any offence of, for example, remaining beyond their leave, if they fail thereafter to apply for permission to stay here. Section 7 closes this loophole by deeming that limited leave of 90 days has been given from the date that exemption ceases. However, the 90 days of deemed leave will not supersede any leave granted prior to the period of exemption if that leave still has more than 90 days left to run upon cessation of exemption. Those who had been granted indefinite leave (settled status) immediately prior to exemption will have this reinstated.

51. Section 7 does not apply to persons who would not require leave to stay in the United Kingdom at the expiration of their exempt status. EEA nationals and their dependants will therefore be unaffected insofar as they are exercising EC free movement rights in the United Kingdom.

Section 8: Persons excluded from the United Kingdom under international obligations

52. Section 8 inserts a new section 8B into the 1971 Immigration Act, which provides that certain persons can be excluded from the United Kingdom as a result of the United Kingdom's international obligations under UN Security Council resolutions and EU Council decisions.

53. Subsection (1) provides that an excluded person must be refused leave to enter or remain in the United Kingdom. Subsection (2) provides that a person's leave to enter or remain in the United Kingdom is cancelled on his becoming an excluded person. Subsection (3) provides that a person who is exempt from immigration control under section 8(1), 8(2) or 8(3) of the 1971 Act by virtue of their employment as the crew member of a ship or aircraft, in a diplomatic mission or an international organisation loses that exempt status on becoming subject to a travel ban.

54. Subsection (4) defines the term "excluded person" as someone who has been named or falls within a category specified under a designated international instrument. Subsection (5) defines the term "designated international instrument" as a resolution of the UN Security Council or an instrument of the Council of the European Union, which requires or recommends that the United Kingdom refuses to admit a person named under such an instrument to the United Kingdom provided that such an instrument has been designated in an order made by the Secretary of State.

55. Subsection (6) provides that certain exceptions to subsections (1) to (3) may be included in the designating order. This would allow, for example, entry to be given to an individual named on a list on asylum or human rights grounds.

Section 9: Treatment of certain overstayers

56. Section 9 enables those foreign nationals who have overstayed their limited leave to enter or remain to apply for leave to remain within a prescribed period before section 10 of the Act comes into force. Any application made within this period will, if refused, attract a right of appeal against deportation, which will be the method of removal if any appeal is unsuccessful. Section 10 and paragraph 12 of Schedule 15 will come into force on the day after the fixed period ends, which should be 2 October 2000, when the Human Rights Act comes into force. Foreign nationals to whom section 10 applies and who have not made an application under the scheme within the fixed period will be liable to administrative removal with no right of appeal before removal.

Section 10: Removal of certain persons unlawfully in the United Kingdom

57. In parallel with the reform of the immigration and asylum appeals system, the White Paper announced that in future, anyone who had been lawfully in the United Kingdom but who no longer had any entitlement to remain would normally be subject to administrative removal rather than deportation. This section provides that those who have failed to observe the conditions attached to their leave, overstayers and those who have obtained leave to remain by deception – ie those currently liable to deportation action under sections 3(5)(a) and 3(5)(aa) of the 1971 Act, and the family members of such people – will be subject to new administrative removal procedures. These procedures will mirror those which currently apply in respect of illegal entrants. Deportation action will continue to apply to cases where the Secretary of State deems the person's removal to be conducive to the public good and to court recommended cases (sections 3(5)(b) and 3(6) of the 1971 Act) and to the family members of someone deported on those grounds.

58. Subsection (2) makes it clear that an overstayer who has applied for leave to remain under the special arrangements set out in section 9 cannot be removed under the new removal procedures. (If an application is subsequently refused, the person concerned will be subject to deportation proceedings and will have a right of appeal to the

Immigration Appellate Authority.) Subsection (3) places a time limit on taking removal action against the family member of someone who is being, or has been, removed similar to that contained in section 5(3) of the 1971 Act.

Section 11: Removal of asylum claimants under standing arrangements with member States

59. This section replaces section 2 of the Asylum and Immigration Act 1996 insofar as it applies to asylum seekers transferred to other Member States under standing EU arrangements for determining responsibility for asylum seekers. These standing arrangements are currently provided for by the Dublin Convention. Article 63 of the Treaty of Amsterdam provides that there should be a new measure in this field within the next five years. This may replace the Dublin Convention.

60. Section 11 is intended to deal with the fact, identified in the White Paper, that many Dublin Convention cases have been subject to unnecessary and lengthy delay as a result of judicial review applications which challenge the safety of the transfer. Like section 2 of the 1996 Act, this new section requires that nothing shall prevent the removal of an applicant provided that the Secretary of State certifies that certain requirements are met. These requirements are that the claimant is not a national of the receiving State and that the receiving State has accepted that it is responsible for considering the asylum claim.

61. Under section 2(2)(b) and 2(2)(c) of the Asylum and Immigration Act 1996, the Secretary of State was required to certify that the following conditions had been satisfied: (i) that the receiving State should be one where the person's life or liberty would not be threatened by reason of his race, religion, nationality, social group or political opinion; and (ii) that the receiving State should be one from which the person would not be sent to another country otherwise than in accordance with the 1951 Refugee Convention. Given that section 11 replaces section 2 of the 1996 Act insofar as it applies to EU Member States, the Secretary of State will no longer be required to certify as to these two matters where the transfer is to take place under standing EU arrangements.

62. In addition, section 11 requires that removal may not proceed if there is an appeal outstanding in respect of a claim that the transfer would be in breach of the Human Rights Act 1998, or the period within which such an appeal should be lodged has not yet expired. In accordance with section 72, this requirement does not apply where the Secretary of State has certified that such a claim is manifestly unfounded.

Section 12: Removal of asylum claimants in other circumstances

63. This section replaces section 2 of the Asylum and Immigration Act 1996 insofar as it applies to asylum seekers transferred to safe third countries other than in the circumstances provided for in section 11. This section re-creates the effect of section 2 of the 1996 Act in respect of these cases.

64. In addition, section 12 requires that removal may not proceed if there is an appeal outstanding in respect of a claim that the transfer would be in breach of the Human Rights Act 1998, or the period within which such an appeal should be lodged has not yet expired. In accordance with section 72, this requirement does not apply where the Secretary of State has certified that such a claim is manifestly unfounded.

65. Section 15 of this Act replaces, with effect from the passing of this Act, section 6 of the Asylum and Immigration Appeals Act 1993. References to section 6 of the 1993 Act in section 2 of the 1996 Act should therefore be read as references to section 15 of this Act (see paragraph 102 of Schedule 14 and paragraph 2 of Schedule 15).

Section 13: Proof of identity of persons to be removed or deported

66. Many of those individuals awaiting removal from the United Kingdom are not in possession of a travel document, which is needed before removal can proceed. Securing a travel document without proof of identity is difficult in many cases. The purpose of this section is to allow the release of fingerprints to the appropriate national authorities, where necessary, to secure the provision of a travel document. Subsections (1) and (2) provide for the release of fingerprint data to the authorities of other countries where they require such data in circumstances where their nationals are to be removed from the United Kingdom but do not have valid passports or identity documents which permit travel.

67. Subsection (3) protects the confidentiality of an asylum seeker by ensuring that the Secretary of State cannot release information about whether the individual concerned has made an application for asylum.

68. The result of subsection (4) is that, as the release of data under subsection (2) is treated as necessary for reasons of substantial public interest, the eighth principle of Schedule 1 to the Data Protection Act 1998 will not apply. The eighth principle states that the transfer of personal data to countries outside the EEA is forbidden unless the country concerned ensures an adequate level of protection in relation to the processing of that data.

Section 14: Escorts for persons removed from the United Kingdom under directions

69. Where someone is refused leave to enter the United Kingdom, the captain of the ship or aircraft in which he arrived, or the owners or agents of that ship or aircraft, may be directed to remove him, or arrange his removal, from the United Kingdom. Such directions may also be given in respect of an illegal entrant. In such cases, the carrier meets the cost of removing the passenger. Where such directions cannot be given – most usually because the carrier cannot be identified – the Secretary of State may direct the owners or agents of any ship or aircraft to make arrangements for the removal of anyone who is an illegal entrant or who has been refused leave to enter. In these circumstances, the Secretary of State meets the costs of the removal. Removal directions – again at public expense – can also be given in respect of someone who is being deported and will be able to be given under the new powers contained in section 10.

70. It is sometimes necessary for the person being removed to be accompanied by an escort. Section 14 allows such directions to provide for the person being removed to be accompanied by an escort. Subsection (2) allows the Secretary of State to make regulations in respect of such escorts and in particular as to who is to bear the costs.

Section 15: Protection of claimants from removal or deportation

71. Section 15, which came into force on Royal Assent, replaces section 6 of the Asylum and Immigration Appeals Act 1993. Under section 6 of the 1993 Act, a person who had made a claim for asylum could not be removed from, or required to leave, the United Kingdom until he had been notified of the decision on his claim. This will continue to be the case. However, subsection (2) allows removal directions to be given or a deportation order to be made during this period (although they do not take effect until the person concerned has been notified of the decision on his asylum claim).

72. The question of setting removal directions or making a deportation order only arises if it is decided that the person concerned is not a refugee. The effect of the new section is that once the Secretary of State has decided to refuse the application for asylum, removal directions can be given – or a deportation order obtained – and notice of both decisions can be given to the person concerned at the same time thereby, where relevant, triggering a right of appeal. (Where the person concerned is an illegal entrant, it is the removal directions which give rise to the right of appeal to the Immigration Appellate Authority.)

73. This section applies with retrospective effect to any removal directions given or deportation orders made in respect of someone protected from removal since the 1993 Act came into force on 26 July 1993.

Sections 16 and 17: Provision of financial security

74. The powers that sections 16 and 17 will confer will enable the Government to give effect to the proposal in the White Paper to introduce a financial bond scheme for visitors to the United Kingdom. Under the proposed scheme, to be elaborated in immigration rules, if an entry clearance officer considering an application for entry clearance has any doubts about a visitor's intentions, the visitor may be invited to arrange for a sponsor in the United Kingdom to provide a financial security (eg a bond). The provision or otherwise of a security would be one of the factors the entry clearance officer would be able to take into account when deciding the application. Any security provided would be forfeited if the applicant did not leave the United Kingdom at the end of their visit, except where refugee status or leave on ECHR grounds was granted. A security would be requested only where the application for entry clearance was judged by the entry clearance officer to be borderline. It would not be relevant if the application clearly justified either the grant or refusal of entry clearance.

75. The Government announced in the White Paper that these powers will be used in the first instance to run a pilot scheme to test whether financial securities for visitors are an effective and practical measure. The Government is undertaking a consultation exercise with interested parties on the design of the pilot scheme and will assess the results of the pilot, which will be made public, to see if they justify wider use of the provisions. The scheme referred to above will be put in place by immigration rules under the powers conferred by these sections. It will be possible to extend these powers to those seeking entry to this country or permission to remain in categories other than visitors. However, there are currently no plans to do so.

Section 18: Passenger information

76. Under paragraph 27(2) of Schedule 2 to the 1971 Act, an order has been made by the Secretary of State allowing an immigration officer to require the captain of a ship or aircraft arriving in the United Kingdom to furnish a passenger list showing the names and nationality or citizenship of passengers on board the ship or aircraft. This power has been applied with modifications by order under the Channel Tunnel Act 1987 to through trains and shuttle trains arriving in the United Kingdom.

77. Section 18 supplements this power by inserting a new paragraph 27B into Schedule 2 to the 1971 Act. The new paragraph allows immigration officers to require owners or agents ("carriers") to disclose certain information relating to passengers who are expected to be carried on their ships or aircraft arriving in and departing from the United Kingdom, or which have arrived in or departed from the United Kingdom. This new power will be capable of being applied by order under the Channel Tunnel Act 1987 to through trains or shuttle trains arriving in or departing from the United Kingdom.

78. The types of information about passengers which can be required will be specified by order subject to the negative resolution procedure (this means that the order is laid before both Houses of Parliament and may be prayed against within 40 days). Carriers will not be required to provide information to which they do not have access but they may, in certain circumstances in the interests of a more flexible administration of immigration control, be required to provide information which they do not currently collect for their own purposes.

Section 19: Notification of non-EEA arrivals

79. This section inserts a new paragraph 27C into Schedule 2 to the 1971 Act. The new paragraph provides an immigration officer not below the rank of chief immigration officer, or an immigration officer authorised by such an officer, with the power to

require a carrier to inform a relevant officer of the expected arrival in the United Kingdom of any of his ships or aircraft which the carrier expects to carry a non-EEA national. It is envisaged that this power will normally be used in relation to arrivals at ports where there is no permanent immigration presence to allow resources to be deployed more efficiently.

80. This new power will be capable of being applied by order under the Channel Tunnel Act 1987 to through trains or shuttle trains arriving in the United Kingdom.

Section 20: Supply of information to Secretary of State

81. This section provides for information to be supplied to the Secretary of State by the police, the National Criminal Intelligence Service (NCIS), the National Crime Squad (NCS), HM Customs and Excise (HMCE) and a person with whom the Secretary of State has made a contract or other arrangements under section 95 or 98 or a sub-contractor of such a person. This section is designed to facilitate closer inter-agency co-operation in tackling abuse of the immigration control, racketeering and other immigration-related offences. It will also enable resources to be deployed more effectively. Those who contract with the Secretary of State to provide support for asylum seekers and their families have been specified in the Act in addition to the law enforcement agencies in order to make it clear that they have the power to pass on any information relating to asylum seekers or more generally to immigration control or immigration crime. Information may only be supplied to the Secretary of State under this provision for the specific "immigration purposes" set out in the section.

82. In addition, the Secretary of State is given the power to specify by order further bodies which may supply information to him, and additional immigration purposes for which he may be supplied with information, under the section. This order-making power will be subject to draft affirmative procedure.

Section 21: Supply of information by Secretary of State

83. This section provides for information to be supplied by the Secretary of State to the police, NCIS, NCS and HMCE for the specified purposes set out in subsections (3), (4), (5) and (6) respectively. It will allow disclosure by the Secretary of State of information held in connection with the exercise of functions under immigration legislation.

84. The section also provides the Secretary of State with the power to specify by order further purposes for the supply of information to certain of these agencies, and other bodies to which information may be provided by him for specified purposes. Again, this order-making power will be subject to draft affirmative procedure.

Section 22: Restrictions on employment: code of practice

85. This section is designed to re-emphasise to employers their duty to avoid racial discrimination in their recruitment practices when seeking to establish the statutory defence under section 8 of the Asylum and Immigration Act 1996. It introduces into the 1996 Act a new section 8A which places the Secretary of State under a duty to issue a code of practice aimed at ensuring that employers do not breach the provisions of the Race Relations Act 1976 by making more checks on potential employees than section 8 requires or by targetting checks on racial grounds. Following consultation, the draft code must be laid before Parliament and may be brought into operation by statutory instrument subject to the negative resolution procedure.

86. Subsections (3) and (4) of the new section provide for consultation with those having statutory responsibility for, or specific interest in, guarding against racial discrimination in employment practice.

Section 23: Monitoring refusals of entry clearance

87. This section replaces section 13(3AA) and 13(3AB) of the 1971 Act. Subsections (1) and (2) require the Secretary of State to appoint an independent monitor to review refusals of entry clearance where there is no right of appeal by virtue of section 60(5). The monitor must, in accordance with subsection (3), make an annual report to the Secretary of State and, under subsection (4), the Secretary of State must lay a copy of the report before Parliament.

Section 24: Duty to report suspicious marriages

88. This section places a duty on superintendent registrars and certain others to report to the Home Office marriages which they reasonably suspect as being sham marriages (as defined). At present there is no such obligation. The purpose is to enable the Home Office to obtain early warning of possible suspicious marriages so that they may be investigated. It does not confer power to refuse to marry on grounds of immigration status. Nor does it confer powers on registrars or others to question couples about their immigration status.

89. Subsection (1) places the duty to report, where there are reasonable grounds for suspecting a sham marriage, on those registration officers in England and Wales to whom notice is given or who attest a notice of marriage under the Marriage Act 1949, on district registrars in Scotland to whom notice of marriage or a certificate is submitted under the Marriage (Scotland) Act 1977 and on registrars and deputy registrars in Northern Ireland to whom notice has been given under the Marriages (Ireland) Act 1844 or the Marriage Law (Ireland) Amendment Act 1863.

90. Subsection (2) provides for the duty to apply where a marriage is solemnised in the presence of a registrar of marriages, and in Scotland to authorised registrars, where before, during or immediately after solemnisation of the marriage the registration officer has reasonable grounds for suspecting the marriage is or will be a sham marriage.

91. Subsection (3) establishes the duty to report to the Secretary of State; and requires it to be without delay and in such form and manner as may be set out in regulations.

92. Subsection (4) provides for regulations to be made (a) in relation to England and Wales by the Registrar General for England and Wales (with the approval of the Chancellor); (b) in relation to Scotland by the Secretary of State after consulting the Registrar General of Births, Deaths and Marriages for Scotland; and (c) in relation to Northern Ireland by the Secretary of State, after consulting the Registrar General in Northern Ireland.

93. Subsection (5) defines a sham marriage as a marriage entered into between a person ("A") who is neither a British citizen nor a national of an EEA State other than the United Kingdom and another person (whether or not such a citizen or national); and entered into by A for the purpose of avoiding the effect of one or more provisions of United Kingdom immigration law or the immigration rules.

Section 25: Provision of facilities for immigration control at ports

94. Paragraph 26(3) of Schedule 2 to the Immigration Act 1971 empowers the Secretary of State to designate control areas at any port, and those concerned with the management of a port are implicitly required to provide such control accommodation and immediate support functions without charge. Other facilities, for example, ancillary office accommodation and waiting areas, which are required, and are no less essential, for the operation of the immigration control have been subject to rental and service charges. The purpose of this section is to enable a framework to be established for determining which facilities should be provided free of charge by port operators.

95. Subsection (1) supplements existing legislation by empowering the Secretary of State to make a direction requiring the provision without charge of the accommodation and

facilities necessary for, or in connection with, the operation of the immigration control at a control port. This will allow the provision of facilities to be standardised and will also have the effect of removing any competitive advantage from which some operators might currently benefit.

96. Subsection (2) provides for consultation with those likely to be affected before the making of a direction, with subsection (3) requiring the issue of a copy of such a direction to the port manager concerned.

97. Subsections (4) and (5) detail the enforcement provisions and sanctions applicable in the event of non-compliance. They provide that a direction given under these provisions is enforceable by county court injunction, or in Scotland by relevant order. They further provide that persistent failure to comply with a direction may lead to the revocation of designation as a port of entry (designation under section 33(3) of the 1971 Act allows port authorities to land and embark passengers without the prior approval of the Secretary of State); or, in the case of a port not so designated, withdrawal of any approval given by the Secretary of State under paragraph 26(1) of Schedule 2 of the same Act for the embarkation and disembarkation of passengers at that port.

98. Subsections (6) and (7) define the terms "control port" and "facilities" as used in the section. The facilities concerned – to be specified in an order made by the Secretary of State – are to be the subject of consultations with representatives of the industry likely to be affected and officials of the Department of the Environment, Transport and the Regions.

Section 26: Charges: immigration control

99. The provisions of section 9(4) of the Immigration Act 1988, which is repealed by this Act, empowered the Secretary of State to provide, on request and in return for a charge, additional immigration officers, or to provide immigration officers to deal with passengers of a particular description or in particular circumstances. This section clarifies those provisions by introducing the concept of a "basic service", which will establish the level of service to be provided at public expense, and above which level any services provided will be subject to charge.

100. Subsection (1)(a) provides for the Secretary of State to make arrangements and to impose charges for the provision of immigration officers or facilities at control ports in addition to those (if any) which are needed to provide a "basic service" at that port. It allows for charges to be made where the "basic service" determined for a control port does not include the provision of immigration officers, for example in circumstances where their presence is not normally required for the operation of immigration control at that port.

101. Subsection (1)(b) provides for charges to be made for dealing with passengers of a particular description or in particular circumstances, for example the provision of enhanced services for first class passengers at control ports or services elsewhere.

102. Subsection (2) defines the term "control port", as given in section 25, as a port in which a control area is designated under paragraph 26 (3) of schedule 2 to the 1971 Act. Subsection (4) defines "basic service" as having such meaning as may be prescribed. The definition of "basic service" to be so prescribed is the subject of consultation with officials of the Department of the Environment, Transport and the Regions and representatives of the industry likely to be affected by these provisions.

Section 27: Charges: travel documents

103. This section allows fees to be prescribed for the consideration of applications for travel documents for refugees, stateless persons and other third country nationals. The section does not cover fees for the issue of national passports. Where a fee is payable in an individual case, the Secretary of State is not required to consider the application until

the fee has been paid. The expectation is that all applications will be subject to a fee. A fee will be payable whether or not the application is granted and a document issued.

104. Fees are to be prescribed by regulations made by the Secretary of State under this section which, read with section 166, allows different fee levels to be set for different types of case. Fees in respect of applications for travel documents for refugees and stateless persons are to be set at the same amount as that charged for the issue of a standard British passport, in the light of the United Kingdom's international obligations under the relevant Conventions. Fees in connection with applications for other types of travel document will reflect the full cost of processing the applications.

105. The issue of a travel document has always been subject to the payment of a fee, but there has not previously been an express power to do so which covered the full range of travel documents. Subsection (3) deems the Secretary of State always to have had the power to charge fees for the consideration of applications for a travel document or for the issue of travel documents. The effect is that legal proceedings for a refund in respect of a fee paid before this section came into force cannot succeed. (However, the Government announced in response to a Parliamentary question on 27 July 1999 a scheme to refund certain persons charged for travel documents provided they apply before 30 November 1999.)

Section 28: Deception

106. The White Paper announced the Government's intention to extend and strengthen the existing criminal offences directed at those who obtain or seek to obtain leave to enter or remain by deception with the particular aim of dealing with failed asylum seekers whose claims have involved blatant deceit. Section 28 replaces and extends the current deception offence set out in section 24(1)(aa) of the 1971 Act (as inserted by section 4 of the Asylum and Immigration Act 1996). The offence provided for in new section 24A additionally encompasses securing or seeking to secure the avoidance, postponement or revocation of enforcement action by means which include deception. A claim for asylum is technically a claim made by the person that it would be contrary to the Refugee Convention for him to be removed from, or required to leave, the United Kingdom. Amending the existing offence in this way will ensure that it may also apply to those who seek to remain in this country on the basis of an unfounded asylum claim that involves the use of deception.

107. The present deception offence is punishable on summary conviction with a fine of not more than level 5 or with imprisonment for not more than six months, or with both (section 24(1) of the 1971 Act). Subsection (3) of new section 24A increases the maximum penalty for the extended offence which on conviction on indictment will be two years' imprisonment or a fine, or both.

Section 29: Facilitation of entry

108. Under section 25(1) of the 1971 Act, it is an offence knowingly to facilitate the entry of illegal entrants, knowingly to facilitate for gain the entry of asylum claimants and knowingly to facilitate the obtaining of leave to remain by deception. Section 29 amends section 25 of the 1971 Act in the following ways.

109. Subsection (2) increases the maximum custodial sentence that can be imposed following a conviction on indictment from seven years to ten years' imprisonment. This follows comments by the Court of Appeal earlier this year suggesting that an increase was necessary to allow flexibility when sentencing people convicted of a single act of facilitation relating to the entry of a number of people.

110. Under section 25(1) of the 1971 Act, as amended by the Asylum and Immigration Act 1996, it is an offence to facilitate the entry of an asylum claimant. Section 25(1A) of the 1971 Act makes further provisions in relation to this offence which are replicated in subsection (3) of this clause. However, subsection (3) also extends the definition of

asylum claimant to include someone who intends to seek protection under the ECHR. Currently, the offence under section 25(1) does not apply to the actions of those who are employed by bona fide refugee organisations. Subsection (3) extends this so that the offence does not apply to the actions of those who are employed by any bona fide organisation whose purposes include providing assistance to people in the position of the asylum claimant in question.

111. Under section 25(5) of the 1971 Act, actions committed by a British citizen (or a British Dependent Territories citizen, British Overseas citizen, British subject or British protected person) outside the United Kingdom in order to facilitate the entry of an illegal entrant are an offence under United Kingdom law. Subsection (4) extends this to such actions committed in order to facilitate the entry of an asylum claimant where this is done for gain. (Facilitating the entry of an asylum claimant is not an offence if it is done otherwise than for gain or by someone in the course of their employment by a bona fide organisation whose purpose it is to assist persons in the position of the asylum claimant.)

Section 30: False statements etc

112. Section 26(1)(c) of the 1971 Act provides that a person is guilty of an offence if, on examination under Schedule 2 to that Act or otherwise, he makes or causes to be made to an immigration officer, or other person lawfully acting in the execution of that Act, a return, statement or representation which he knows to be false or does not believe to be true. This section extends this provision so that it covers such statements or representations made to a person acting in the execution of certain other immigration legislation. It will remain a summary offence punishable with a fine of not more than level 5 on the standard scale or with imprisonment for not more than six months, or with both.

Section 31: Defences based on Article 31(1) of the Refugee Convention

113. Section 31 creates a defence against charges for certain offences (specified in subsections (3) and (4)) where the person concerned is a refugee and can show that he presented himself to the authorities in the United Kingdom without delay, claimed asylum as soon as reasonably practicable after his arrival in the United Kingdom and showed good cause for his illegal entry or presence. This defence, which is modelled on Article 31(1) of the Refugee Convention, does not apply if the refugee stopped in a third country outside the United Kingdom unless he can show that he could not reasonably have been expected to be given protection under the Convention in that country. It does not apply either in respect of any offences committed after the person concerned has made a claim for asylum. The defence is only available to someone who is a refugee within the meaning of the Convention and where the Secretary of State has refused to grant a claim for asylum that person is taken not to be a refugee unless he can show that he is, eg by means of other legal proceedings, including an appeal to the Immigration Appellate Authority.

114. The defence is intended to supplement the administrative arrangements introduced in mid-1999 which are intended to identify at an early stage those cases where Article 31(1) may be relevant. In addition, because the provision applies retrospectively, any refugee who has been convicted of a specified offence before the Act comes into force and who had not argued a defence based on Article 31(1) during those proceedings, can apply to the relevant Criminal Cases Review Commission with a view to the case being referred to the Court of Appeal or High Court of Justiciary on the grounds that he would have had a defence under this section if it had been in force at the time.

115. The Secretary of State may add to the list of offences to which this defence can apply.

Part II: Carriers' liability

116. Sections 32 to 37 and 39 introduce a new a civil penalty to be imposed on those persons responsible for the transporting of clandestine entrants to the United Kingdom. It is entirely separate from, and in addition to, the provisions under sections 40 to 42, which relate to passengers without proper documents. Section 39 enables the Secretary of State to extend the civil penalty to rail freight wagons by regulation.

Section 32: Penalty for carrying clandestine entrants

117. Subsection (1) defines a clandestine entrant as someone who evades or attempts to evade immigration control, or claims or intends to claim asylum having (a) arrived in the United Kingdom having concealed himself in a vehicle, ship or aircraft; or (b) gone through or tried to go through immigration control concealed in a vehicle; or (c) arrived in the United Kingdom having embarked on a ship or aircraft outside the United Kingdom concealed in a vehicle.

118. Subsection (2) makes those responsible for clandestine entrants liable to a penalty for each person carried in this way. Liability also extends to other persons (eg dependants) who were concealed with the clandestine in the same transporter. Subsection (4) makes provision for the joint and several liability of the persons responsible to be discharged by payment of the penalty by one or more of them.

119. Subsection (5) details who is responsible for clandestine entrants arriving in the United Kingdom concealed in a vehicle (see subsection (1)(a)). Those responsible are the owner or captain of the ship or aircraft if the clandestine is concealed on a ship or aircraft; or the owner, hirer or driver if concealed in a vehicle; or the owner, operator or hirer if concealed in a detached trailer. ("Owner" is given an extended meaning by section 43.) Subsection (6) establishes who is a responsible person in relation to clandestine entrants as defined in subsection (1)(b) and (c). The responsible person will be the owner, hirer and driver of the vehicle or the owner, operator or hirer of the detached trailer. Subsection (7) makes clear that it is irrelevant whether the person responsible for a clandestine entrant knew or suspected that one or more clandestine entrants were concealed in the transport used.

120. Subsections (8) and (9) provide that, where a vehicle is itself carried on a ship or aircraft, those responsible for a clandestine entrant transported in that vehicle are liable only for that person and not for other clandestines who may have been transported at the same time in other vehicles on the ship or aircraft, or in the ship or aircraft itself.

121. Subsection (10) explains that "immigration control" for these purposes includes a United Kingdom immigration control that is operated in a prescribed control zone outside the United Kingdom, such as that at the juxtaposed immigration control in Coquelles. It is proposed that the latter will be prescribed.

Section 33: Code of practice

122. This section provides that having consulted appropriate persons, the Secretary of State must issue a code of practice. This is to set out the measures to be taken by persons (such as road hauliers) in operating a system to prevent clandestine entrants gaining entry to and travelling in their vehicles or other forms of transport. Subsection (4) of section 34 requires that reference be made to the code of practice issued under section 33 in order to determine what constitutes an effective system for preventing the carriage of clandestine entrants.

Section 34: Defences to claim that penalty is due under section 32

123. This section applies to persons (referred to as carriers) who are alleged to be liable to a penalty under section 32.

124. Subsections (2) and (3) provide a carrier with defences against the allegation that he is liable to a penalty. It is a defence if the carrier can show that he or a relevant employee acted under duress (eg that he had been threatened with a gun). Alternatively, he will have a defence where he can show that he did not know and had no reasonable grounds for suspecting that he was carrying a clandestine entrant, that there was an effective system in operation for preventing the carriage of illegal entrants and that the person responsible for operating the system, for example the driver, had done so properly.

125. Subsections (5) and (6) provide for those instances where more than one person is responsible for a clandestine. If one of them has a defence under subsection (3), this will not affect the liability of others. However, should the defence be under subsection (2) (the defence of duress) then the liability of any other responsible person is also discharged.

Section 35: Procedure

126. This section requires that where the Secretary of State has decided that a person is liable for one or more penalties under section 32, he must notify him of this.

127. Subsections (3) and (4) provide that service of a penalty notice on one responsible person has the effect of service on all other persons responsible. However, subsection (5) requires the Secretary of State to take reasonable steps actually to serve the notice on the others, while the penalty remains unpaid. Subsections (6) to (9) provide for persons in receipt of a penalty notice to notify the Secretary of State by means of a “notice of objection” if the penalty is disputed. In these circumstances the Secretary of State must consider and determine whether the penalty is payable. Subsection (9) enables regulations to be made for service of notices in relation to detached trailers.

128. Where the penalty continues to be disputed, or there is a refusal to pay, it is recoverable by an action for debt, in which the Secretary of State will have to prove the penalty is due (subsection (10)).

Section 36: Power to detain vehicles etc in connection with penalties under section 32

129. This section provides power to detain a vehicle and certain ships and aircraft as security until such time as all penalties and expenses connected with detention have been paid.

130. Subsections (1) and (2) enable a senior officer to detain a vehicle, small ship or small aircraft until all penalties and any detention expenses have been paid. This power is only to be used where the officer believes there to be a significant risk that the penalty will not otherwise be paid within the period allowed by the penalty notice. This power may not be exercised if an alternative form of security, which the Secretary of State considers satisfactory, has been given.

131. Subsections (4) and (5) provide that if the Secretary of State has acted reasonably in issuing the penalty notice, the detention of a transporter is not unlawful even if it is later found that the penalty notice was ill-founded. This does not apply where the Secretary of State acted unreasonably in issuing the penalty notice (subsection (5)).

Section 37: Effect of detention

132. Subsection (2) provides for an application to be made to the court by persons with a legitimate interest for the release of a detained transporter.

133. Subsection (3) makes provision for the release of the detained transporter by the court if it decides that adequate security against the penalty and any connected expenses has been offered or that there is no significant risk of the penalty not being paid, or if the court has significant doubt that the penalty is payable and the return of the transporter is vital to the applicant.

134. Subsection (4) enables the Secretary of State to arrange for the sale of the transporter if it has not been released by the court and if the penalty is not paid within 84 days of the first day of detention. The power of sale is subject to Schedule 1.

Section 38: Assisting illegal entry and harbouring

135. Subsection (1) amends section 25(6) of the 1971 Act to enable the court to order the forfeiture of a vehicle where the driver is convicted of an offence under subsection (1) (a) or (b): ie where the driver is knowingly involved in assisting an illegal entrant or (for gain) an asylum claimant to enter the United Kingdom.

136. Subsection (2) inserts a new section, section 25A, in the 1971 Act. This provides that where a person is arrested for an offence under section 25(1) (a) or (b) of the 1971 Act, the ship, aircraft or vehicle employed may be seized by a senior immigration officer or police constable pending a decision to charge (or in Scotland, institute criminal proceedings against) the arrested person and, if charged (or criminal proceedings have been instituted), pending the decision of the court. On conviction, the court may decide to order the forfeiture of the transport involved under (the existing) section 25(6).

137. In order to detain a ship, aircraft or vehicle under section 25A(1), the senior officer or police constable must have reasonable grounds to believe that it could be subject to forfeiture by the court under section 25(6) upon conviction of the person concerned.

138. Under new section 25A(3), where the owner of the ship, aircraft or vehicle detained is not the person arrested for the offence, he may apply to the court for it to be released.

139. Where an application is made under section 25A(3) the court may order the release of the ship, aircraft or vehicle if satisfied that adequate securities are provided and on condition that it is made available to the court if, on conviction of the arrested person, it is ordered to be forfeited.

Section 39: Rail freight

140. Section 39 makes provision to enable the civil penalty to be extended so as to apply to those responsible for bringing clandestine entrants into the United Kingdom on freight trains.

141. Subsection (1) provides that the Secretary of State can make regulations to so extend the civil penalty. The regulations may apply (with or without modification) any provision in Part II of the Act for the purpose of enabling penalties to be imposed in respect of a clandestine entrant who (a) arrives in the United Kingdom concealed in a rail freight wagon and (b) claims or indicates that he intends to seek asylum or evades, or attempts to evade, the immigration control.

142. Subsection (2) sets out what issues in particular may be covered by the regulations. These include enabling an additional penalty to be imposed in respect of persons concealed with the clandestine entrant; to make provision as to which person or persons are liable to the civil penalty in respect of a clandestine entrant; to make provision for the detention of any particular rail freight wagon; and to take a power to sell a detained freight wagon.

143. Subsection (3) requires that the Secretary of State must consult the rail freight industry before making regulations under this section.

Section 40: Charges in respect of passengers without proper documents

144. This section replaces, with some amendments, section 1 of the Immigration (Carriers' Liability) Act 1987 (which is to be repealed), which relates to the carriage of inadequately documented passengers on ships, aircraft and trains; the latter by virtue of the Channel Tunnel (Carriers' Liability) Order 1998 SI 1998/1015.

145. Subsections (1) and (2) apply where a person requiring leave to enter the United Kingdom arrives by ship, aircraft, road passenger vehicle or train and fails to produce a passport or other document which satisfactorily establishes his identity and nationality, and a visa where required, when asked to do so by an immigration officer. In these circumstances the owner of the transport (the operator in the case of a train) carrying such a passenger is liable to pay to the Secretary of State a charge of £2,000 or such other sum as may be prescribed. The charge relates to each inadequately documented passenger carried.

146. Subsection (4) states that there is to be no liability where the owner (or operator in the case of trains) can show that the required documents were produced to him or his representative when the passenger embarked on his flight, voyage or journey to the United Kingdom. Subsection (5) provides for a further defence against the imposition of a charge under the section for a train operator or the owner of a road passenger vehicle. The defence applies where they can demonstrate that they have in place a satisfactory system for the prevention of carriage of inadequately documented passengers and have done everything practicable to carry it out. This defence reflects the fact that train and road passenger vehicle operators may have difficulties, in some countries, lawfully carrying out the checks required to secure the defence in subsection (4). The defence does not apply where they have no such difficulty.

147. Subsections (7) and (8) state that where the owner of a road passenger vehicle which has arrived in the United Kingdom on a ship or aircraft is liable for a charge in respect of an inadequately documented passenger, the Secretary of State may charge the owner of the vehicle or, alternatively, the owner of the ship or aircraft, but not both.

148. Subsection (11) defines "road passenger vehicle" in the context of this section; it excludes taxis.

Section 41: Visas for transit passengers

149. This section replaces section 1A of the Immigration (Carriers' Liability) Act 1987.

150. Subsection (1) gives the Secretary of State the power to lay an order before Parliament to require transit passengers (ie those people who are travelling through the United Kingdom without entering it on their way to their ultimate destination – eg who remain airside) to hold a transit visa.

151. Subsection (3)(b) states that someone who has the right of abode in the United Kingdom (ie someone who has the right to live in the United Kingdom and who is not subject to immigration control) cannot be required to have a transit visa.

152. Subsection (3)(c) allows the Secretary of State to provide for an exemption from the requirement to obtain a transit visa for certain categories of person, for example, people possessing a residence permit of an EU Member State.

Section 42: Power to detain vehicles etc in connection with charges under section 40

153. Subsection (1) provides a senior immigration officer with the power to detain as security for payment any transporter used to carry a person who is not properly documented and for whom a carriers' liability charge is incurred. In addition, any other transporter, used on any route to carry passengers by the person liable to the charge, may also be detained. A transporter detained under this section may continue to be detained pending payment of any expenses incurred by the Secretary of State as a result of the detention. Subsection (3) gives the court power to release a detained transporter if satisfactory security is given for the payment of the charge, there is no significant risk that the charge and expenses will not be paid, or if there is significant doubt as to whether the charge will stand, and if it considers that the release of the transporter is vital to the applicant.

154. Subsection (4) states that, if the charge is not paid within the allotted timescale (84 days from the first day of detention) and the court has not ordered its release, the Secretary of State can sell the transporter. Sale of the transporter is subject to the provisions of Schedule 1.

155. Subsection (5) makes the detention of a transporter lawful even if it subsequently turns out the charge is not owed, unless (subsection (6)) the charge was imposed unreasonably.

Schedule 1: Detention and sale of transporters

156. This Schedule deals with the detention and sale of transporters under sections 37 and 42.

157. Paragraph 1 provides that the permission of the court must be obtained before a transporter can be sold. It also states that before the court can give its permission it must have proof that the penalty or charge was due but has not been paid by the person liable and that the transporter is liable to sale.

158. Paragraph 2 provides that the Secretary of State must take such steps as may be prescribed to bring the proposed sale to the notice of anyone who may be affected by the sale of the transporter so that they can involve themselves in any application the Secretary of State makes to the court.

159. Paragraph 3 requires the Secretary of State to obtain the best possible price for any transporter sold.

160. Paragraph 4 provides that, should the Secretary of State fail to comply with the conditions as set out in paragraphs 2 and 3 of the Schedule, any person suffering loss as a consequence will be able to institute proceedings to obtain compensation. This will not, however, serve to make the sale of the transporter invalid.

161. Paragraph 5 sets out how the proceeds from any sale will be distributed. The order of distribution will be set out in regulations to be made by the Secretary of State.

Part III: Bail

162. This part of the Act will introduce a greater judicial element into the detention process. It provides for the creation of up to two routine bail hearings, the first of which will take place about a week after initial detention, the second about a month later (if the person concerned is still detained). These will be in addition to the right to apply for bail under existing legislation (which will be replaced in due course by new arrangements made under section 53. It also introduces a statutory presumption in favour of bail.

Section 44: Bail hearings for detained persons

163. This section introduces routine bail hearings for those people detained solely under immigration legislation, with the exception of those whose deportation has been recommended by a court. It provides that detained persons will be entitled to a routine bail hearing within nine days of their initial detention and, where they remain in detention, a further hearing between 33 and 37 days following initial detention. Subsection (4) places a duty on the Secretary of State to secure a first reference no later than the eighth day following detention. If the person remains in detention, a second reference must be made no later than the thirty-sixth day following detention (subsection (5)). A person will be entitled to routine bail hearings if he is released and, then detained again at a later date. In such circumstances there will again be two routine bail hearings (assuming the person concerned is not released at the first hearing).

164. Subsection (7) ensures that the routine bail hearing will be limited to addressing the individual's suitability for release on bail. Subsections (10) and (11) ensure that if the Secretary of State fails to make a reference to the court, or the court fails to hear a

routine bail hearing in time, arrangements will be put in place so as to ensure that the hearing will take place as soon as is reasonably practicable.

165. Subsection (12) provides that, except for those coming under the jurisdiction of the Special Immigration Appeals Commission (SIAC) under the Special Immigration Appeals Commission Act 1997 on national security grounds, the routine hearings in England, Wales and Northern Ireland will be before magistrates until such time as the Immigration Appellate Authority is dealing with an appeal. In this context the Immigration Appellate Authority will be regarded as dealing with an appeal after the relevant papers have been referred to it by the Home Office. Where the Immigration Appellate Authority is dealing with an appeal, the hearing will be before the court dealing with that appeal. Routine hearings will be held before SIAC in the case of any person whose bail application would be held before that body under current provisions. In Scotland, all routine bail hearings not held before SIAC will be before an Immigration Appellate Authority adjudicator (unless an appeal under the Immigration Acts is pending before another body, in which case that body shall hold the hearing).

166. Subsection (14) provides that the Secretary of State may by regulations make provision for the court to adjourn a routine bail hearing for the purpose of obtaining a medical or other report or for any other reason. Subsection (15) provides that the regulations may, in particular, provide for the requirement to make a second reference not to apply in certain prescribed circumstances.

Section 45: Location of bail hearings

167. This section allows the Secretary of State to direct where, in relation to a particular case or class of case, routine bail hearings should be heard. These places may include courtrooms, detention centres, prisons, or Immigration Appellate Authority hearing centres. A direction by the Secretary of State under this clause will require the approval of the Lord Chancellor.

Section 46: General right to be released on bail

168. Section 46 provides that the detained person must be released on bail unless one of the exceptions to the general right to be released on bail applies or the court has imposed a requirement under subsection (1) of section 47 which has not been met. The exceptions to the general right to be released on bail are set out in subsections (2), (3) and (4). Under subsection (2) the court need not grant bail if it is satisfied that there are substantial grounds for believing that one of the exceptions in that subsection applies. It will be for the Home Office to show, on the balance of probabilities, that there are substantial grounds for believing one or more of the exceptions apply. Subsection (4) provides an exception to the general right to be released on bail for those subject to deportation on conducive grounds in the interests of national security.

Section 47: Powers exercisable on granting bail

169. This section provides that a person may be released on bail by the court following a routine bail hearing. Subsection (1) specifies that the grant of bail may be subject to such conditions as appear likely to the court to result in the appearance of the person bailed at the required time and place. The conditions may require the person to enter into a recognizance (with or without sureties) or, in Scotland, a bail bond or a security to be given either by the person bailed or on his behalf. This is in contrast to bail granted under the Immigration Act 1971, which presently requires a recognizance or (in Scotland) bail bond to be given before bail can be granted. Subsection (2) makes it clear that the court may impose a requirement under subsection (1) only if it considers that its imposition is necessary to secure compliance with any condition to which bail will be subject. Under subsections (4) and (5), the court must impose a condition requiring any released person to report either to an immigration officer at a specified time and place, or at any such other time and place as may be notified in writing by an immigration

officer, or to the court dealing with an appeal under the Immigration Acts. Subsection (9) allows the court, instead of releasing a person on bail immediately, to fix the amount and conditions of bail with a view to the bail being taken subsequently.

Section 48: Forfeiture

170. This section allows for the forfeiture of recognizances or, in Scotland, bail bonds entered into under section 47. If the court ordering forfeiture of a recognizance is not a magistrates' court, it must specify a magistrates' court which will, for the purposes of collection and enforcement of the sum forfeited, be treated as the court which ordered the forfeiture. In Scotland, any bail which has been forfeited will be treated as having been forfeited by the appropriate sheriff court. All forfeited sums must be paid to the Lord Chancellor and transmitted to the Consolidated Fund.

Section 49: Forfeiture of securities

171. This section allows for the forfeiture of a security where a bailed person has broken a mandatory condition of bail. A court can order either the value of the security, or a specified part of it, to be forfeited unless it appears that the bailed person has reasonable cause for breaking the mandatory condition of bail. Under subsection (5), an application may be made to the court by, or on behalf of the person who gave the security that the bailed person did have reasonable cause for breaking the mandatory bail condition. Such an application may be made before or after the order for forfeiture has taken effect but may not be considered by the court unless it is satisfied that the Secretary of State was given reasonable notice of the applicant's intention to make the application (subsection (7)).

Section 50: Power of arrest

172. This section grants power to an immigration officer or constable to arrest, without warrant, a person who has been released on bail if there are reasonable grounds for believing that the person has broken or is likely to break any condition of bail. Subsection (6) specifies that the person must, if required by a condition of his release to appear before an immigration officer within 24 hours of the arrest, be brought before an immigration officer within that period. Subsection (7) provides that if the person was released on bail by SIAC, he must be brought before that body within 24 hours of arrest. In all other cases, the person arrested must be brought before a justice of the peace or, in Scotland, before an adjudicator or, where this is impracticable, the sheriff, (subsection (8)). The court dealing with the matter may, if of the opinion that the arrested person has broken or is likely to break any condition on which he was released, order the person to be detained, release him on his original bail or release him on new bail. If the court does not agree that the person has broken or is likely to break a condition of bail, it must order release on the original bail. Subsection (5) provides immigration officers and constables with powers to enter premises, where necessary, by reasonable force, for the purposes of searching for a person liable to arrest under the section so long as an authorising warrant has been issued.

Section 51: Procedure

173. This section makes provision for the procedure and practice to be followed in connection with routine bail hearings. It provides that any rules made by the Lord Chancellor will be under the general rule-making power contained within section 144 of the Magistrates' Courts Act 1980. The rules must require the Secretary of State to notify the detained person and also, if he is aware of the fact, the person who is to represent the detained person at the hearing, that a reference under section 44 has been made. Subsection (3) restricts repetition of the same arguments by detainees at subsequent bail hearings. The section also requires magistrates holding routine bail hearings to sit in open court and provides for the conduct of proceedings at routine bail hearings by persons other than barristers (or, in Scotland, advocates) or solicitors.

Section 52: Use of live television links at bail hearings

174. This section will enable courts to direct, after hearing representations from both parties, that the detained person is to be treated as being present in the court if he is able, by live television link or otherwise, to see and hear the court and to be seen and heard by it. Subsection (2) provides that any representations about whether the hearing should be conducted by TV link will themselves be heard by TV link. If, after hearing representations by both parties, the court decides not to give a direction, it must give its reasons for refusing. The court may not give a direction under this section unless the Secretary of State has notified the court that appropriate facilities for the setting up of a link are available.

Section 53: Applications for bail in immigration cases

175. This section allows the Secretary of State, by regulations, to make new provision in relation to applications for bail made under current immigration legislation. Subsection (2) makes it clear that the regulations may confer a right to be released on bail in prescribed circumstances. Subsection (3) provides that, in particular, the regulations may make provision for creating or transferring jurisdiction to hear an application for bail from adjudicators to magistrates, as to the places in which a hearing can take place, as to circumstances in which, and conditions (including financial conditions) on which an applicant may be released on bail, and to amend or repeal any enactment so far as it relates to such an application. Any regulations under this section require the approval of the Lord Chancellor. In addition, the Lord Chancellor is required to obtain the consent of Scottish Ministers before he gives his approval to any regulations which would, for Scotland, extend to the sheriff court or the Court of Session jurisdiction to hear applications for bail with which section 53 is concerned.

Section 54: Extension of right to apply for bail in deportation cases

176. This section extends the right of those subject to deportation action to apply for bail under current immigration legislation. At present there is an anomaly between deportation and other enforcement cases in that persons who are subject to deportation action may only apply for bail where they have an outstanding appeal. This anomaly is removed by section 54.

Section 55: Grants to voluntary organisations

177. This section will enable the Secretary of State, with the approval of the Treasury, to make grants to voluntary organisations providing advice or assistance to detained persons in connection, inter alia, with routine bail hearings. The Secretary of State can decide the terms and conditions on which such grants may be made.

Part IV: Appeals

178. Part IV of the Act sets out arrangements for immigration and asylum appeals.

Section 56 and Schedule 2: The appellate authorities

179. Section 56 provides for the Immigration Appeal Tribunal to continue in being.

180. Schedule 2 re-enacts with modifications Part II of Schedule 5 to the 1971 Act concerning the appointment and payment of Tribunal members and staff. References to the Secretary of State have been replaced by references to the Lord Chancellor, to whom responsibility was transferred by the Transfer of Functions (Immigration Appeals) Order 1987 (SI 1987 No. 465).

181. Paragraph 1 of Schedule 2 allows the Lord Chancellor to appoint such number of members to the Tribunal as he sees fit. Paragraph 1(3) sets out the criteria for appointment as one of the legally qualified members.

182. Paragraph 2(1) requires the Lord Chancellor, as now, to appoint a President and, in addition, a Deputy President and requires both appointments to be made from amongst the legally qualified members. The Deputy will support the President in the judicial management of the Tribunal.

183. Paragraph 6(3) provides for the jurisdiction of the Tribunal to be exercised, in a case or category of case, by a panel of one or more members as the President may direct.

Section 57 and Schedule 3: Adjudicators

184. Section 57 confirms that there will continue to be adjudicators to hear appeals for the purposes of the Act. Subsection (2) requires the Lord Chancellor, as now, to appoint a Chief Adjudicator from amongst those appointed under subsection (1). The Chief Adjudicator will allocate duties amongst the adjudicators and will have such other functions as the Lord Chancellor may confer on him.

185. Schedule 3 re-states and brings together the appointment and payment arrangements for adjudicators and their support staff as set out in Part I of Schedule 5 to the 1971 Act, section 8(5) of the Asylum and Immigration Appeals Act 1993 and section 3(3) of the Asylum and Immigration Act 1996.

186. Paragraph 1 of Schedule 3 provides a new power for the Lord Chancellor to appoint a Deputy Chief Adjudicator and Regional Adjudicators from amongst those appointed under section 57. The Deputy and Regional Adjudicators will have such functions as the Chief Adjudicator may confer on them. The Deputy Chief Adjudicator will be able to act on behalf of the Chief Adjudicator when the Chief Adjudicator is absent.

187. Paragraph 2 sets out the criteria for appointment as an adjudicator. In the past, the Lord Chancellor had been required to designate those who may deal with asylum appeals. This will no longer be the case. In future, it will be a matter for the Chief Adjudicator to decide when an adjudicator is able to deal with asylum appeals. Paragraphs 3 and 4 relate to the terms of office and remuneration of adjudicators and paragraph 5 to compensation on ceasing to be an adjudicator.

188. Paragraph 6 allows the Chief Adjudicator to direct that a case or category of case may be dealt with by a panel consisting of more than one adjudicator. Paragraph 7 relates to the appointment of staff to support adjudicators.

Section 58: Appeals: General

189. This section and the sections which follow it in Part IV set out a revised system of appeals, including a new system for a one-stop comprehensive appeal following refusal of leave to enter or remain. Part IV replaces all rights of appeal established in earlier legislation.

190. Section 58 establishes important general principles. Subsection (1) provides that the right of appeal given by a particular provision of Part IV is subject to any limitations specified in other sections of Part IV.

191. Subsection (5) sets out when an appeal is pending and when it ends: it clarifies that an appeal ceases to be pending when it is abandoned. An adjudicator may rule that an appeal has been abandoned, or an appeal may have to be treated as abandoned, under subsections (8) to (10), because the appellant leaves the United Kingdom, is granted leave to enter or remain, or a deportation order is made against him. Subsections (6) and (7) ensure that an appeal continues to be pending so long as a further appeal may be brought and until such further appeal is finally determined. It is important to know when an appeal is pending, in particular in the light of the effect it has under Part II of Schedule 4 of the Act (stay on directions for removal).

Section 59: Leave to enter the United Kingdom

192. Section 59 is concerned with appeals in relation to refusal of leave to enter at the port and refusals of entry clearance abroad. Subsection (1) confers a right of appeal to an adjudicator against either a refusal of leave to enter or a decision that the applicant is a person who is subject to immigration control and therefore requires leave to enter. Where an appellant under this section claims that he should be removed to a different country, he must in accordance with section 68(3) provide evidence, if he is not a national of that country, that the country will admit him. The provision is to ensure that the objection to destination is taken as part of the appeal against refusal of leave to enter: it is not a separate right of appeal in its own right.

Section 60: Limitations on rights of appeal under section 59

193. Section 60 sets out the restrictions on rights of appeal under section 59. Subsection (1) provides that persons who claim that they are not subject to immigration control have no right of appeal if they do not possess the appropriate documentary evidence. Subsection (2) provides that there is no right of appeal where a person is seeking leave to enter for a purpose for which the Immigration Rules or an order made by the Secretary of State require a person to hold a particular document, and the person does not hold such a document.

194. Subsection (3) provides that the right of appeal against refusal of leave to enter can only be exercised in the United Kingdom in the cases of persons who held a current entry clearance or work permit. Otherwise, the appeal must be made after removal.

195. Subsections (4) and (5) deny a right of appeal against refusal of entry clearance or leave to enter under section 56 in respect of:

- visitors (but not including family visitors – see below);
- students accepted for a course for up to 6 months;
- those intending to study but not accepted for any course; or
- a dependant of one of the above.

The appeal right is not removed in the case of such a person if he holds a current entry clearance.

196. Under subsection (5), a person who is refused an entry clearance for a family visit will now enjoy a right of appeal. The meaning of “family visitor” will be prescribed in regulations and the procedures relating to this right of appeal will be set out in procedural rules. Subsection (6) enables the Secretary of State by regulation to require a family visitor appealing under section 59 to pay a fee and for the fee to be repaid if the appeal is allowed.

197. Subsection (7) of section 60 denies a right of appeal against refusal of leave to enter where refusal is mandatory under the Immigration Rules, including a requirement to hold specific documents which are defined in subsection (8) as entry clearances, passports or other identity documents, and work permits. Subsection (9) denies a right of appeal against refusal of leave to enter or refusal of entry clearance if the Secretary of State certifies that directions have been given by the Secretary of State personally that the person’s exclusion is conducive to the public good.

Section 61: Variation of limited leave to enter or remain

198. This section gives a right of appeal against a decision to vary or refuse to vary limited leave if, as a result of the decision, the person with the leave may be required to leave the United Kingdom within 28 days. This gives effect to the principle that a right of appeal should exist only for the most adverse immigration decisions and that there should be no right of appeal unless a decision requires the person’s departure from

the United Kingdom. A person must have valid leave to enter or remain at the time the application is made in order to have a right of appeal under this section (see also commentary on section 10 and commentary on section 69 in relation to asylum seekers granted exceptional leave to enter).

Section 62: Limitations on rights of appeal under section 61

199. Section 62 applies restrictions on the right of appeal under section 61. Subsection (1) denies a right of appeal against a refusal to grant further leave in circumstances where refusal is mandatory under the Immigration Rules. Dependants of such persons similarly have no right of appeal. In addition, there is no right of appeal under section 61 against a refusal where the Secretary of State personally certifies that the person's departure would be conducive to the public good in the interests of national security, the relations between the United Kingdom and any other country, or for other reasons of a political nature. As at present, such persons would have a right of appeal to SIAC. Finally, there is no right of appeal under section 61 against a variation of leave made by statutory instrument, or a refusal to make such an instrument.

Section 63: Appeals against deportation orders

200. Section 63 gives a right of appeal against a decision to make a deportation order or a refusal to revoke a deportation order. Subsection (2) ensures that an order cannot be made while the person may still bring an appeal against the decision to make an order. Subsection (4) provides that an appellant may object to the country to which it is intended to deport him and claim that he ought to be removed, if at all, to a different country specified by him. Where a person claims that he should be removed to a different country specified by him he must show, in accordance with section 68(3), if he is not a national of the country, that the specified country will admit him. This provision is to ensure that objection to destination is taken as part of the appeal against deportation: it is not a separate right of appeal in its own right.

Section 64: Limitations on rights of appeal under section 63

201. This section sets out limitations on the right of appeal under section 63. As now, there will be no right of appeal to the Immigration Appellate Authority for those whom it is decided to deport on the ground that this would be conducive to the public good for national security or similar reasons. Likewise, there will still be no right of appeal to the Immigration Appellate Authority against a refusal to revoke a deportation order where the Secretary of State certifies the appellant's exclusion on these grounds, nor if the Secretary of State personally refuses to revoke the order. As now, there will instead be a right of appeal in these circumstances to SIAC.

202. An appeal against a refusal to revoke a deportation order will still not be exercisable in the United Kingdom. But sections 65 and 69 will enable an in-country appeal solely on human rights or asylum grounds in some circumstances. Finally, section 64 re-enacts the restriction in the 1971 Act which prevents a person who is being deported as a family member from disputing statements about the family relationship made to secure his entry or stay here, with provision for circumstances when that person cannot be held responsible for such statements.

Section 65: Acts made unlawful by section 6(1) of the Human Rights Act 1998

203. This section creates a new right of appeal on human rights grounds. It provides for a right of appeal where someone believes that a decision under the Immigration Acts relating to their entitlement to enter or remain in the United Kingdom was made in breach of their human rights. Acting in breach of human rights in acting in a way made unlawful by section 6(1) of the Human Rights Act 1998. Under subsections (2) and (7) the right of appeal applies to decisions made by an immigration officer, the Secretary of State or an entry clearance officer.

204. Under subsections (3) to (5) the adjudicator or Tribunal has the power to consider, and allow the appeal on the basis of, any relevant human rights issues which arise in proceedings on any appeal. The Act also confers jurisdiction on SIAC to consider human rights questions (paragraph 121 of Schedule 14).

Section 66: Validity of directions for removal

205. Section 66 provides for a right of appeal against directions for removal in certain circumstances. Under subsection (2) the appellant is limited, as now, to arguing that there was in law no power to give the directions on the grounds quoted: the appeal is not a review of whether or not the directions should have been made in the appellant's particular circumstances. Subsection (4) provides that where an appeal is against directions given by virtue of a deportation order the appellant cannot dispute the original validity of that order: he will already have had the opportunity to do so.

206. Subsection (3) maintains the principle that an appeal under this section may not be exercised in the United Kingdom; but where the person has an in-country appeal under the asylum or new human rights provisions, he may dispute the validity of the directions at the same time.

Section 67: Removal on objection to destination

207. Section 67 confers a right of appeal against directions for removal on the ground that removal should be to a specified country other than the one in the directions. This right is not extended to those removed under section 10.

Section 68: Limitations on rights of appeal under section 67

208. Section 68 sets out a number of limitations on the right of appeal under section 67. A person will not be entitled to appeal against the destination specified in removal directions given following a refusal of leave to enter unless he is also appealing against the decision that he required leave to enter or he was refused leave at a time when he held a current entry clearance or work permit. In addition, if a person is entitled to object to a country on an appeal under section 59 or section 63 and he does not object to it, or his objection is not upheld, then section 64 does not entitle him to appeal against any directions subsequently given as a result of the refusal if their effect will be his removal to that country.

Section 69: Claims for asylum

209. Section 69 sets out the rights of appeal of persons who are refused asylum. Subsection (1) provides for a right of appeal on asylum grounds against refusal of leave to enter. Subsection (2) provides a right of appeal on asylum grounds against a decision to vary or refuse to vary a person's limited leave to enter or remain and where the decision would require the person's departure within 28 days. The section also provides a right of appeal on asylum grounds against deportation and removal (subsections (4) and (5)).

210. In contrast to other provisions in Part IV, which restrict a right of appeal to decisions which require the applicant's departure from the United Kingdom, subsection (3) provides a right of appeal where an asylum seeker is refused asylum but granted leave to enter or remain on other grounds. A right of appeal is provided in such circumstances in the light of the significant difference in the rights attached to refugee status as distinct from other immigration categories.

Section 70: Limitations on rights of appeal under section 69

211. Section 70 imposes a number of limitations on the rights of appeal set out under section 69. These principally concern cases where leave to enter has been refused on the grounds that the appellant's exclusion from the United Kingdom would be in the interests of national security; or where a decision to make a deportation order, or

to refuse to revoke one, was also made on grounds of national security. They also include cases where the Secretary of State personally (and not someone acting under his authority) has refused to revoke a deportation order. In all of these instances, there is no entitlement to appeal under section 69. However, there is a right of appeal to SIAC under section 2 of the Special Immigration Appeals Commission Act 1997 in these circumstances.

212. Subsection (4) has the effect of restricting the right of appeal, set out in subsection (3) of section 69, against a refusal to grant asylum but where limited leave to enter or remain has been given. A person who has been granted leave but refused asylum on the basis that he falls under Article 1(F) of the Refugee Convention (which lists those categories of persons considered not to be deserving of protection) will not have a right of appeal under section 69 where the Secretary of State certifies that the disclosure of material on which the refusal was based is not in the interests of national security. In such cases, SIAC will hear the appeal unless it quashes the certificate and remits the matter to the ordinary appellate bodies under section 4(1A) of the Special Immigration Appeals Commission Act 1997 (as inserted by paragraph 122 of Schedule 14 to the Act). Finally, section 70(7) states that a claim for asylum must have been made before the time of the refusal to grant or vary leave, or the making of directions (as the case may be), if the person wishes to appeal against the refusal on asylum grounds.

Section 71: Removal of asylum claimants to safe third countries

213. Section 71 provides a right of appeal against a certificate issued under sections 11 or 12 where it is claimed that any of the requirements applicable to such a certificate was, or is, not satisfied. In these circumstances, a person may appeal to an adjudicator against the certificate, but not to the Immigration Appeal Tribunal (Schedule 4, paragraph 22).

Section 72: Miscellaneous limitations on rights of appeal

214. This section imposes limitations on certain appeal rights. Subsection (1) provides that unless a certificate issued under sections 11 or 12 has been set aside on appeal under section 65 or 71, or otherwise ceases to have effect, the person in respect of whom it was issued is not entitled to appeal on other matters arising before his removal.

215. Subsection (2) provides that an appeal under section 71 will not be exercisable in the United Kingdom if the applicant has been, or is to be sent, to a Member State of the EU or a designated safe third country; nor will that person be able to appeal before removal under section 65 (human rights) if the Secretary of State certifies that the allegation is manifestly unfounded. Subsection (3) provides that applicants cannot appeal against a decision made on an application where that application had to be made on a prescribed form and they did not comply with any prescribed procedures and time limits.

Section 73: Limitation on further appeals

216. Section 73 makes provision for cases where a person has appealed and that appeal has been finally determined, but there has been a further decision, against which a notice of appeal has been lodged. Subsections (2) and (3) provide that the Secretary of State may certify a human rights claim made in such a notice to the effect that it could reasonably have been made before, is designed to delay removal and has no other legitimate purpose. On certification the human rights aspect of the appeal is to be treated as finally determined.

217. Subsections (4) and (5) prevent a person from pursuing an appeal based on matters which were considered at the earlier appeal, if the Secretary of State certifies that they were so considered.

218. Subsections (7) to (9) effectively allow an immigration officer or the Secretary of State to certify that a further application is being made to delay removal and for no other legitimate purpose; if certified, no appeal can be brought.

Section 74: "One-stop" procedure: duty to disclose grounds for appeal etc

219. Section 74 requires the decision-maker to serve on persons who have a right of appeal exercisable in the United Kingdom against a decision, a notice inviting submission of additional grounds. The notice must also be served on any family member. Additional grounds might be immigration, asylum or human rights matters, compassionate circumstances or a mixture of these. These additional grounds will then be considered. If these new grounds for remaining are also refused, and the refusal attracts a right of appeal, the refusal will be dealt with at a single appeal along with the original refusal. Adjudicators will not necessarily have powers to consider every matter which has been raised in additional grounds (see also notes on section 77 and Schedule 4, paragraph 21). Subsections (8) and (9) provide for regulations to prescribe who are relevant family members and the procedures to be followed in respect of notices and statements.

Section 75: Duty to disclose grounds for entering etc the United Kingdom

220. Section 75 essentially applies the one-stop procedures set out in section 74 to categories of person who will only have a right of appeal in the United Kingdom if they make a specific asylum or human rights claim. The one-stop notice is to be served when they make that claim. Subsection (6) provides for regulations to prescribe that the provisions of sections 73, 76 or 77 may apply, with prescribed modifications, in such cases.

Section 76: Result of failure to comply with section 74

221. This section sets out the consequences of failure to comply with the requirements of section 74. It provides that if an applicant fails to mention a particular ground on which he intends to rely in his statement, even though he was aware of it at the time, he may not rely on that ground in any appeal. The section provides for exceptions to this general principle. Subsection (3) disapplies the principle where the ground is a claim for asylum or a claim that an act breached the applicant's human rights, or where the Secretary of State considers that the applicant had a reasonable excuse for the omission.

222. Subsection (5) provides that if an applicant claims asylum after the prescribed period for the statement required under section 74, no appeal may be made against a refusal of that claim if the Secretary of State certifies that one purpose of making the claim for asylum was to delay removal from the United Kingdom and that the applicant had no other legitimate purpose.

Section 77: "One-stop" appeals

223. Section 77 sets out a number of matters in respect of asylum appeals and the new "one-stop" appeal process. Its purpose is to require an adjudicator considering an asylum appeal also to deal with any other appealable matters raised by the appellant in his statement in response to the notice to him under section 74 and which he is not prevented from relying on by section 76. Section 77(3) embodies the principle, established in current case law, that in asylum matters the appellate body is to consider the evidence of the situation which obtains when the appeal is heard, rather than being limited to reviewing the evidence available when the initial decision was taken. Issues relating to Article 3 of the Human Rights Convention are included in this category. In other cases, however, the evidence must relate to the situation at the time of the decision (subsection (4)).

Section 78: Transfer of appellate proceedings

224. Section 78 clarifies the position of those applicants who have appealed and who subsequently have a decision to deport or to refuse to revoke a deportation order taken against them, which they cannot appeal against under section 63 because of the limitations of rights of appeal imposed by section 64. If such a person appeals against that decision under section 2(1) or 2A of the Special Immigrations Appeals Commission Act 1997, any appeal under Part IV is transferred to, and must be heard by

SIAC. Subsection (5) transfers an appeal to SIAC if an additional ground given under section 74 or 75 raises issues which would otherwise go to SIAC on appeal.

Section 79: Appeals without merit: penalty on continuing an appeal without merit

225. This section allows the Immigration Appeal Tribunal to notify a party bringing an appeal before it that, in the opinion of the Tribunal, the appeal lacks merit and that a fixed financial penalty may be imposed if the appeal is pursued and fails. The Tribunal will be able to exercise this power at any time before it determines an appeal by a notification in such form as may be prescribed in rules. The power will be exercisable if, in the future, the requirement to apply for leave to appeal to the Tribunal in that category of appeal is removed. The power of the Lord Chancellor to determine the financial penalty, which it is intended will cover the Tribunal's costs, will be exercisable through statutory instrument subject to annulment by either House of Parliament.

Section 80: EEA nationals

226. Section 80 makes provision to make regulations giving rights of appeal which have been prescribed under EU law for EEA nationals, members of their family and certain non-EEA nationals who are members of a United Kingdom national's family. There will also be additional categories of person who are entitled to similar rights under agreements to which the United Kingdom is a party or by which it is bound. The rights of appeal will cover decisions relating to admission, residence and the issue or withdrawal of residence permits. The regulations will govern various aspects of the appeals and may make provisions requiring an appellant to state additional grounds. Appeals against decisions under this section will be heard by the Immigration Appellate Authority or, where appropriate, by SIAC. A person claiming to be an EEA national must produce evidence of identity to benefit from the provisions of section 80 (subsection (12)).

Section 81: Grants to voluntary organisations

227. This section enables the Secretary of State, with the approval of the Treasury, to make grants to any voluntary organisation which provides advice and assistance for, or other services for the welfare of persons who have rights of appeal under the Act.

Schedule 4: Appeals

Schedule 4, Part I: Procedure

228. Part I of Schedule 4 sets out detailed provisions as to the operation of Part IV covering issues such as notice of appealable matters, the Lord Chancellor's rules of procedure, hearings in private, leave to appeal and Convention cases.

229. Paragraph 1 concerns notice of appealable matters. The Secretary of State may make regulations to provide for written notice to be given to anyone of a decision or action which attracts a right of appeal under Part IV (whether or not the decision or action is appealable in a particular case). The regulations will allow the form and procedure of such a notice to be defined.

230. Paragraph 3 empowers the Lord Chancellor to make appeal procedure rules. It re-states and extends the rule making powers as set out in section 22(1) of the 1971 Act and transferred to the Lord Chancellor by the Transfer of Functions (Immigration Appeals) Order 1987.

231. Paragraph 4(1)(e) provides that rules may make provision for the circumstances in which an adjudicator or the Immigration Appeal Tribunal may set aside for its decision. It is intended, for example, that the power to set aside will be exercisable on the Tribunal's own motion when considering an application for leave to appeal to the Court of Appeal.

232. Paragraph 6 concerns hearings in private and paragraph 7 concerns the circumstances in which leave to appeal to the Tribunal must be granted. Paragraph 8 makes it an offence to fail without reasonable excuse to comply with a requirement of an adjudicator or the Tribunal to give evidence or attend.

233. Paragraph 9 applies to Refugee Convention cases and claims under the ECHR. It sets out the circumstances under which an asylum or human rights claim may or may not be certified. The effect of certification by the Secretary of State is to permit a right of appeal to an adjudicator only, subject to the adjudicator's agreement that the certificate was properly made. The paragraph sets out the circumstances in which a claim may be certified. These include where a claim was made after the appellant was refused leave to enter, recommended for deportation, notified of a decision to deport or removal, or if it is manifestly unfounded, fraudulent or vexatious. A certificate may not be made if evidence suggests there is a reasonable likelihood that the appellant has been tortured in the country to which he is to be sent. A further effect of the new certification procedures in this Act, and the repeal of section 2 of the Asylum and Immigration Act 1996 by Schedule 16, is to abolish to so-called "White List".

Schedule 4, Part II: Effect of appeals

234. Part II deals with the effect of appeals. Paragraph 10 provides that any directions for removal already given cease to have effect when an appeal is pending under section 59 or 69(1).

235. Paragraph 11 makes similar provision in relation to appeals under sections 66, 67 or 69(5) against removal directions given under section 10 of this Act, or Part I of Schedule 2 or Schedule 3 to the 1971 Act. But paragraph 12 ensures that the detention provisions of Schedule 2 and Schedule 3 may still be applied where appropriate.

236. Paragraph 13 provides that any period where an appeal is pending under section 59, 67 or 69(1) is to be disregarded for the purpose of calculating the period of two months for the giving of directions or notice of directions under Schedule 2 to the 1971 Act. Paragraph 14 defines when an appeal is to be regarded as pending for these purposes and paragraph 15 provides that the same provisions apply to persons belonging to his family as well as to the appellant.

237. Paragraph 16 provides that a variation of leave will not take effect while an appeal against the variation is pending under section 61 or 69(2). Paragraph 17 provides that an appellant's leave and the conditions attached to it continue while an appeal is pending under section 61 or 69(2).

238. Paragraph 18 provides that a deportation order is not to be made where an appeal is brought under section 63(1)(a) or 69(4)(a) is pending. Paragraph 19 applies similar provisions in respect of the family members of appellants.

239. Paragraph 20 provides that a person will not be required to leave the United Kingdom if an appeal is pending under section 65 (Acts made unlawful by section 6(1) of the Human Rights Act 1998). But that does not prevent the actual giving of directions for removal or the making of a deportation order: such actions will not, however, have effect during the period.

Schedule 4, Part III: Determination of appeals

240. Part III of Schedule 4 sets out provisions for the determination of appeals. Paragraph 21 provides that, subject to paragraph 24, which sets out the appeals which must be dismissed, an adjudicator must allow an appeal if he considers that a decision was not in accordance with the law or with any immigration rules applicable to the case or if the decision involved the exercise of discretion which should have been exercised differently. Under subparagraph (5) the adjudicator must, in allowing an appeal, give directions for giving effect to the determinations and may also make recommendations

with regard to any other action he considers should be taken under the Immigration Acts. The Immigration Rules are to be amended to include certain concessionary matters over which adjudicators previously had no jurisdiction.

241. Paragraph 22 sets out the circumstances in which an appellant may appeal to the Immigration Appeal Tribunal against an adjudicator's determination. If the Tribunal affirms the adjudicator's determination it may add to or alter any directions or recommendations.

242. Paragraph 23 provides that with the leave of the Tribunal an appellant may appeal further to the Court of Appeal, or, in Scotland, the Court of Session. If leave is refused the appellant may bring an appeal with the leave of the court itself.

243. Paragraph 24 sets out those appeals which must be dismissed. These are where the adjudicator is satisfied that the appellant was an illegal entrant at the time of the refusal of leave to enter; where a deportation order was in force at the time an entry clearance was refused; or where the appeal relates to a certain category of crew member subject to removal directions as such, but the adjudicator is satisfied that there was power to give removal directions as an illegal entrant.

Part V: Immigration advisers and immigration service providers

244. Part V of the Bill makes provision for the regulation of immigration advisers and immigration service providers.

245. In the White Paper, the Government announced its intention to introduce legislation to regulate immigration advisers. The scheme covers both non-legally and legally qualified advisers. It will be unlawful for any person to provide immigration advice by way of business in or from the United Kingdom, unless they are registered to do so; a member of a designated professional body or European equivalent; or exempt from registration.

Section 82: Interpretation of Part V

246. Those providing immigration advice and services in connection with criminal proceedings are not caught by the regulatory scheme. Those providing advice in connection with a bail application in the context of immigration detention are covered as a relevant matter. Immigration advice or services are defined as advice given or representations made in the course of business whether or not for profit. The term "relevant matters" means a claim for asylum; an application for, or the variation of, entry clearance or leave to enter or remain in the United Kingdom; unlawful entry into the United Kingdom; nationality and citizenship under the law of the United Kingdom; citizenship of the EU; admission to Member States of the EU under Community law; residence in a Member State of the EU in accordance with rights conferred by or under Community law; removal or deportation from the United Kingdom; an application for bail under the Immigration Acts or under the Special Immigration Appeals Commission Act 1997; or an appeal against, or an application for judicial review in relation to, any decision taken in connection with the above matters.

Section 83: The Immigration Services Commissioner

247. This section makes provision for the appointment by the Secretary of State, after consulting the Lord Chancellor, of the Immigration Services Commissioner (the Commissioner) and sets out his general functions. The Commissioner must exercise these functions to ensure that those who provide immigration advice or services are fit and competent to do so, act in the best interests of their clients, do not mislead any court, tribunal or adjudicator and do not seek to abuse immigration or asylum procedures or advise another to do so. The Commissioner is required to publicise his functions.

Section 84: Provision of immigration services

248. This section prohibits the provision of immigration advice or services by those who are not qualified to do so. Contravention of the prohibition is an offence. The section sets out who are to be qualified persons. These include those who are registered with the Commissioner, or who are members of a designated professional body or equivalent EEA professional body. It provides the Commissioner and the Secretary of State with the power to exempt a person or category of persons, respectively, from the scheme. The Commissioner is provided with the power to exempt a person in respect of the provision of certain types of immigration advice or services and not others: for example, the Commissioner may exempt a person from giving advice on immigration cases but not on asylum cases. It also sets out those who do not fall to be regulated, including those employed by a government department when acting in that capacity.

Section 85: Registration and exemption by the Commissioner

249. This section states that the Commissioner must keep a register of those persons he has registered and a record of those he has exempted from registration. It also introduces Schedule 6. The register will record who is a qualified person to provide immigration advice or services and who is exempt.

Section 86: Designated professional bodies

250. This section lists the designated professional bodies whose members are to be considered qualified to provide immigration advice or services. It provides the Secretary of State with the power to amend the list of designated professional bodies and places a duty on the Commissioner to keep this list under review and to report to the Secretary of State any failure of a body to provide effective regulation of its members. The intention is to catch a general failing rather than a single act of ineffective regulation.

251. The Secretary of State is required to consult the Commissioner, the Legal Services Ombudsman or territorial equivalents before removing a body from the list of designated bodies by order. The Secretary of State is also required to seek the agreement of the Lord Chancellor or (as the case may be) Scottish Ministers before removing a body from the list of designated professional bodies. The Lord Chancellor or the Scottish Ministers are required to consult the designated judges or the Lord President of the Court of Session, respectively, about this matter.

252. A designated professional body may seek to remove itself from the list of designated professional bodies. A fee set by the Secretary of State is payable by each designated body.

Section 87: The Immigration Services Tribunal

253. This section establishes the Immigration Services Tribunal, which will hear disciplinary charges laid by the Commissioner and to which any person aggrieved by certain decisions of the Commissioner (such as to refuse registration or continuation of registration) may appeal. Schedule 7 sets out matters regarding appointment to the Tribunal.

Section 88: Appeal upheld by the Immigration Services Tribunal

254. This section gives the Immigration Services Tribunal certain powers when it allows an appeal against a decision of the Commissioner. For example, in an allowed appeal against the decision of the Commissioner to refuse an application for registration or continuation of registration, it may direct the Commissioner to register the applicant if appropriate with a limitation on the applicant’s registration.

Section 89: Disciplinary charges upheld by the Immigration Services Tribunal

255. This section gives the Immigration Services Tribunal power to impose a range of sanctions, amongst which are the power to direct the Commissioner to record the charge for consideration on application for continued registration; to direct the applicant to seek continued registration without delay; to direct the Commissioner to consider whether to withdraw exemption; to direct the repayment of fees to clients; to direct the payment of a penalty; and to direct the restriction, suspension or prohibition of the provision of immigration advice and services, including advice and services provided by employees or those working under supervision. It also makes provision for the Commissioner to recover a penalty, and for clients to recover fees, from those who have been found by the Tribunal to charge unreasonable fees.

Section 90: Orders by disciplinary bodies

256. This section enables the disciplinary body of a designated professional body to be given powers to restrict, suspend or prohibit the provision of immigration advice or services by a member of that professional body. The disciplinary bodies to have these powers are to be specified in an order made by the Secretary of State, subject to consultation with the relevant designated professional body.

Section 91: Offences

257. This section sets out the penalties for those providing immigration advice or services if not qualified to do so or when subject to a restraining order, namely: on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or both, or on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both. A restraining order is defined as either a direction given by the Immigration Services Tribunal or an order made by a disciplinary body to restrict, suspend or prohibit the provision of immigration advice or services. Where it is proved that an offence has been committed by a body corporate with the consent, connivance or neglect of an officer of that body, that officer will also be guilty of the offence.

Section 92: Enforcement

258. This section provides the Commissioner with the power to apply to a county or sheriff court for an injunction or interdict where a person continues to provide immigration advice or services when not qualified, or when restrained from doing so.

Section 93: Information

259. This section sets out provisions governing disclosure of information to the Commissioner and the Immigration Services Tribunal. It also sets out provisions governing the disclosure of information by the Commissioner and prohibits the disclosure of information without lawful authority. This is particularly important in view of the powers available to the Commissioner, or those acting on his authority, for entry to premises (Schedule 5, paragraph 7).

Schedule 5, Part I: Regulatory functions of the Immigration Services Commissioner

260. Paragraph 1 of Schedule 5 provides the Commissioner with the power, after consultation, to make rules with regard to the professional practice, conduct and discipline of registered advisers and their employees or those supervised by them in connection with the provision of immigration advice or services. Paragraph 2 requires the Commissioner to make and alter these rules in writing. Paragraph 3 requires the Commissioner to prepare and issue a code of standards for certain persons providing immigration advice or immigration services, other than the members of designated bodies. Paragraph 4 allows the Secretary of State to extend the code to members of

designated professional bodies subject to consultation with the Immigration Services Commissioner, the Legal Services Ombudsman or territorial equivalents and subject to the approval of the Lord Chancellor or the Scottish Ministers.

261. Paragraph 5 requires the Commissioner to set out a scheme for the investigation of complaints and paragraph 6 requires the complaint scheme to allow those subject to investigation reasonable opportunity to make representations. It also requires those persons to assist the Commissioner in his investigation. Those who fail to comply may have their registration cancelled, exemption withdrawn or be referred to the relevant regulatory body.

262. Paragraph 7 provides the Commissioner or an authorised member of his staff with the power to enter premises (but without using force) and to take copies of any document or information held on computer which the investigating officer considers relates to the investigation of a relevant complaint against a registered person. It also permits cancellation of registration where access by the Commissioner or his staff is denied or where he is obstructed in carrying out an investigation.

263. Paragraph 8 requires the Commissioner to give a written statement on determining a complaint under the complaints scheme. Paragraph 9 sets out the options available to the Commissioner on determining a complaint. These include recording a complaint for consideration when a registered person next applies for continued registration or a requirement for a registered person to apply for continued registration without delay. If the person is authorised by a designated professional body (including EEA bodies) or working under the supervision of such a person, the Commissioner may refer the complaint to the relevant regulatory body. If a person is exempted by the Commissioner (or is employed by, or working under the supervision of such a person), then the Commissioner may consider whether to withdraw exemption.

264. Paragraph 10 enables the Commissioner, when referring a complaint to a designated professional body, to set a timetable for the investigation of the complaint and, if appropriate, the taking of disciplinary proceedings. The Commissioner is required to take into account the failure by the designated body (whether in part or whole) to comply with directions in deciding to make a report under section 86 as to the failure of self regulation of the body concerned; and the Secretary of State must take it into account in deciding whether to withdraw the designation of the professional body under that section.

Schedule 5, Part II: Immigration Services Commissioner's status, remuneration and staff etc

265. Part II of Schedule 5 sets out the Immigration Services Commissioner's status, remuneration and staff. Paragraph 23 disqualifies the Commissioner and the Deputy Commissioner from membership of the House of Commons, and paragraph 24 disqualifies them from membership of the Northern Ireland Assembly. The Act does not disqualify either the Commissioner or the Deputy Commissioner from membership of the Scottish Parliament or the National Assembly for Wales. Paragraph 25 brings the Commissioner under the jurisdiction of the Parliamentary Commissioner for Administration (PCA) and ensures that the actions of the Commissioner may be subject to scrutiny by the PCA.

Schedule 6: Registration

266. Paragraph 2 requires the Commissioner to register an applicant who is competent and fit to provide immigration advice or services, and allows registration subject to certain restrictions (eg an immigration adviser may be permitted to give advice on immigration matters but not on asylum matters).

267. Paragraph 3 provides the Commissioner with the power to require applications for continued registration and to determine the format and content of these applications.

It also provides that the Commissioner must cancel registration where he considers that an applicant for continued registration is no longer competent or fit to provide immigration advice or services. The Commissioner also has the power to vary the extent of the registration by making the registration subject to the restrictions referred to in paragraph 266 above, or by making the registration have full effect.

268. Under paragraph 4 of Schedule 6 a person who is convicted of an offence under the 1971 Act of facilitating illegal entry or of altering immigration documents or obstructing an immigration officer or other person acting in the execution of the 1971 Act is disqualified from registration or continued registration.

Part VI: Support for asylum seekers

269. Part VI of the Act sets out provisions for the support of asylum seekers.

Section 94: Interpretation of Part VI

270. Subsection (1) defines an asylum seeker as someone who has made a claim for asylum under the Refugee Convention, which has not yet been determined, or for protection under Article 3 of the ECHR, and whose claim has not yet been determined. Dependants of asylum seekers are supported alongside the asylum seeker, and a dependant is defined as an asylum seeker's spouse or any dependent child of the asylum seeker or spouse who is under the age of 18. There is a power to add to this list by means of regulations. This subsection also defines a supported person under the terms of the Secretary of State's scheme so that it includes both the principal asylum seeker or his dependants. This reflects the ability of the Secretary of State to provide support for an asylum seeker's dependants even though he may not be supporting the principal asylum seeker, for example, because he is detained.

271. Under section 95 support may be provided to an asylum seeker by the Secretary of State, or through arrangements made by him with another party. The Home Office proposes to contract with local authorities, housing associations, private sector landlords and the voluntary sector for the provision of accommodation and subsistence for asylum seekers. Subsection (2) of section 94 clarifies that throughout Part VI of the Act, references to support provided under the main power in include support provided under arrangements made with others.

272. Subsection (3) of section 94 defines when an asylum claim is to be treated as having been determined for the purposes of the support arrangements. A claim would be determined a prescribed number of days after either the Secretary of State's decision on an asylum application, or (where there has been an appeal) the final determination of the appeal. It is expected that this period will not be less than 14 days; this period of grace would allow a former asylum seeker time to make other arrangements before his stay in accommodation provided under Part VI ends. This provision would only apply to single asylum seekers or childless couples; the effect of subsection (5) is that families with dependent children will continue to be eligible for support for as long as they remain in the country. Subsection (6) makes it clear, however, that they would cease to be eligible for support under the Secretary of State's scheme if the asylum seeker was recognised as a refugee or otherwise granted leave to enter or remain (because he would be entitled to transfer to the main benefits system).

273. Subsection (7) gives the Secretary of State power to reach a decision on the age of a person claiming support. This provision is necessary, for example, because some asylum seekers claim to be minors when they are not.

Section 95: Persons for whom support may be provided

274. This section contains the key support power conferred on the Secretary of State, and in particular sets out whom he may support. It sets out the core tests that will be applied when considering applications for assistance under these provisions.

275. Subsection (1) provides that support may be provided for asylum seekers and their dependants who appear to the Secretary of State to be either destitute or who are likely to become destitute within a period to be prescribed in regulations; this latter provision will allow the Secretary of State to start making support arrangements in anticipation of destitution occurring. The power to provide support exists only so long as destitution (or the threat of it) exists; thus if someone assisted under these provisions ceases to be destitute, the Secretary of State will cease to be able to assist him. Support may either be provided by the Secretary of State (in practice the Home Office) directly, or under arrangements he makes with others who will provide support.

276. Subsection (2) provides for the making of regulations to exclude people from entitlement under prescribed circumstances; for example, asylum seekers who remain eligible for social security benefits because they are nationals of countries which are signatories to either the European Social Charter or the European Convention on Social and Medical Assistance.

277. Subsection (5) provides for regulations to be made setting out matters to be taken into account in determining the adequacy of accommodation for those asylum seekers who already have access to accommodation before applying to the Secretary of State for support. Subsection (6) sets out certain matters which may not be taken into account in determining whether accommodation is adequate for this purpose. No account may be taken of whether the asylum seeker has any right to occupy accommodation (eg whether or not he has a tenancy or is a licensee), or the fact that the accommodation is shared with others, that it is of a temporary character (eg a short stay hostel), or the area in which it is located. Subsections (7) and (8) provide for the Secretary of State to make secondary legislation specifying what kinds of items or expenses are, or are not, to be treated as essential living needs and identifying matters to which he may or may not have regard in considering whether these needs are met.

278. Subsections (9) to (11) provide that the Secretary of State may make the support subject to conditions which must be notified to the person in writing. These conditions could cover matters such as the behaviour of the applicant, his responsibilities as an occupier of property made available by the Secretary of State, or a requirement to live at the accommodation provided or (for those receiving assistance with living expenses only) for him to live at the address notified to the Home Office for the purpose of his asylum application. If a person is in breach of these conditions he could be evicted from the accommodation, and/or the support for living expenses ended. Subsections (12) and (13) are the enabling provisions giving effect to Schedules 8 and 9. Schedule 8 provides the Secretary of State with powers to make regulations governing the operation of the support scheme when Part VI comes into force, while Schedule 9 provides for support to be provided on an interim basis during a period from shortly after Royal Assent until the main Part VI arrangements come into operation.

Schedule 8

279. Schedule 8 is a vehicle for the powers to make regulations about the operation of the support scheme under Part VI. By setting out a scheme the Secretary of State may indicate the way in which he would normally provide support and at what level (although this would not limit his discretion); this would allow claimants and those advising them to know what he may expect.

280. Regulations under paragraph 2 may prescribe that, in determining whether an asylum seeker is destitute and, if so, to what extent support should be provided, the Secretary of State is able to take into account any income, support or assets which the asylum seeker or his dependants have, or which might reasonably be expected to be available from other sources. This might include support from friends and relatives already in the country or from the voluntary sector.

281. Regulations under paragraph 3 would set out the circumstances under which payments may be made at a flat rate applicable to anyone meeting certain criteria (eg that support

should be available to the value of £x per adult and £y per child) and the circumstances under which the Secretary of State may make special payments to meet particular needs (eg to someone whose particular medical condition gives rise to special needs). Nonetheless, regulations may be made under paragraph 4 allowing for particular items or services which fall outside an asylum seeker's essential living needs to be made available in certain circumstances.

282. Paragraph 5 provides for regulations allowing any income, support or assets which an asylum seeker or his dependants may have to be taken into account reaching a view on the level or nature of support to be provided. This would also apply to resources to which he might reasonably be expected to have access, for example, from friends or family already in the United Kingdom.

283. There may be cases in which there is a dispute between the National Asylum Support Service and the asylum seeker regarding the value of assets which he possesses or to which he has access. So paragraph 6 permits regulations to be made as respects their valuation.

284. Conditions will be attached to any support provided under Part VI. Paragraph 7 provides for regulations allowing consideration to be taken of the extent to which the asylum seeker has complied with these conditions in deciding whether to continue providing support or the level and nature of that support. This would include, for example, individuals who vandalised the property which they had been allocated. Regulations under paragraph 8 would also allow the Secretary of State to suspend or cease to provide support in certain circumstances including to those cases where the asylum seeker has ceased to live in the accommodation provided or (for those receiving subsistence support only) who were no longer living at the address they had notified to the Secretary of State.

285. Paragraph 9 provides for regulations to prescribe the period of notice to be given to an asylum seeker required to quit accommodation provided under Part VI, whether because his support is to be terminated, or because he is to be moved to other accommodation. The provisions contained in paragraphs 73, 78, 79, 81, 82, 87 and 88 of Schedule 14 disapply the statutory secure and assured tenancy regimes that would otherwise apply to asylum seekers receiving support under Part VI.

286. There may be occasions in which a supported asylum seeker has a small income (but not enough to disqualify him from support). Paragraph 10 would provide for regulations requiring him to make contributions to support. Similarly there may be cases in which an asylum seeker who, although destitute at the time of making his application, possesses assets which for some reason he is unable to realise. There is power within paragraph 11 for regulations covering the recovery of sums from the asylum seeker if those assets subsequently become available.

287. Regulations under paragraph 12 would cover procedural matters relating to applications for support. These regulations might set out, for example, how an application should be made and the arrangements and timescales for notifying the Secretary of State of changes in circumstances that would lead to a reassessment of the asylum seeker's continuing support (for example, the birth of a child).

Schedule 9

288. The provisions in Schedule 9 will apply to those asylum seekers receiving support from local authorities under social services legislation prior to the interim arrangements taking effect, and those who claim asylum in country during the interim period (between regulations under Schedule 9 taking effect and Part VI coming into force). When Part VI comes into force those who have been accepted for support under the interim provisions will continue to be supported in this way until a decision is taken to transfer them to the Part VI arrangements.

289. Paragraph 1 provides a power to require local authorities to provide support to asylum seekers and their dependants who appear to be destitute or likely to become destitute.

290. Paragraph 2(1) provides that regulations must be made setting out which local authority is to have responsibility for assessing destitution. Provision also exists within paragraph 2(2) for support to be provided by a local authority (or the Secretary of State if applicable) on an emergency basis in the period between the asylum seeker making his application for support and a decision being taken as to whether he is eligible for it.

291. Paragraph 3 provides that the test of destitution to be adopted by local authorities during the interim period is the same as that which will apply once Part VI comes into force.

292. There may be occasions in which it would be appropriate to refuse, terminate or discontinue support and regulations under paragraph 4 would set these out. This might include any cases in which the asylum seeker abuses the support he has been provided with. The exact nature and level of support and the conditions attached to it would be set out in regulations under paragraphs 5 and 6. It is envisaged that, for single people, local authorities would be constrained to provide support by means of vouchers, with a small amount of cash, but they would be free to provide support for families in the form of cash if they so wished.

293. Paragraphs 8 and 9 contain provisions to assist local authorities under pressure as a result of the large numbers of asylum seekers they are currently supporting. Under existing arrangements there may be instances where asylum seekers being supported by one authority are resident in the area of another. Typically, this happens where there is a shortage of accommodation in the area of the authority with responsibility for supporting the asylum seeker. Regulations may be made limiting the areas in which local authorities may place asylum seekers while continuing to support them or the particular circumstances in which they may not do this.

294. Paragraph 9 allows regulations to be made permitting a local authority to refer elsewhere asylum seekers who apply to them for support during the interim period, provided that the sending authority is supporting more than a certain number of asylum seekers, that number to be determined by the Secretary of State. This will allow authorities which are already supporting large numbers of asylum seekers to disperse asylum seekers to other authorities which are less burdened during the interim period. However, such referrals may only take place if the claim appears bona fide; it is not intended that this should be a detailed assessment as it will remain the responsibility of the receiving authority to determine whether the individual is destitute.

295. Regulations under paragraph 10 would provide that those asylum seekers who make a claim for support to the Secretary of State while at the same time lodging their application for asylum at IND may also be dispersed.

296. It is intended that the power conferred by paragraph 11 may be used to require, for example, a registered social landlord to give reasonable assistance to local authorities providing support during the eligible period.

297. Paragraph 12 provides power to set out details regarding the procedure for applying for support and determining eligibility.

298. Paragraph 13 provides power to deem those supported by local authorities under section 21 of the National Assistance Act 1948 or under section 17 of the Children Act 1989 on to support under Schedule 9.

299. Paragraph 14 permits regulations to provide that asylum seekers being supported by local authorities under the interim arrangements are no longer to receive assistance under certain items of legislation. In practice, it is intended that asylum seekers would no longer be able to have recourse, either to section 21 of the National Assistance Act 1948 or to the provisions relating to children's welfare to relieve destitution. However,

regulations could still make it possible to provide assistance under such legislation in certain limited circumstances.

Section 96: Ways in which support may be provided

300. Section 96 sets out the manner in which the Secretary of State may provide support for destitute asylum seekers and their dependants. The extent of the support is set out in subsection (1): it may include accommodation, or provision for essential living needs (including meals and personal care items), or both. Where a person has adequate accommodation (eg because he can stay with friends or relatives) he may be provided with living expenses only, and where he has sufficient resources to meet his living expenses but cannot afford rent he may be provided with accommodation only. There is also provision for meeting expenses associated with pursuing the asylum application; the last category would not extend to legal expenses, but would cover the costs of preparing and copying certain documents, and travelling to interviews with the IND associated with the asylum seeker's claim for asylum. There is also provision to allow an asylum seeker and his dependants to attend a bail hearing in connection with detention under the Immigration Acts. Additionally, subsection (2) provides that in exceptional circumstances support may be given in other ways which go beyond the provision of accommodation, essential living expenses and expenses associated with the application until such time as the asylum seeker's claim for asylum has been determined.

301. Subsection (3) provides that support should not normally be given by way of cash payments. The intention is that asylum seekers will be provided either with board and lodging together, or, if they are to cater for themselves, they will be given vouchers to be exchanged for food and other essentials at certain shops or supermarkets. They will be given a small weekly cash allowance to cover minor incidental expenses.

302. Subsections (4) and (5) give the Secretary of State the power to make an order disapplying or repealing the provisions that limit the extent of cash payments.

Section 97: Provision of support: supplemental rules

303. Subsection (1) of section 97 sets out factors to which the Secretary of State must have regard in providing accommodation. These are that the need for accommodation is only temporary pending determination of an asylum claim (so security of tenure need not be an issue), and the desirability of providing accommodation in areas where there is a ready supply (in contrast to areas such as London where there is an acute shortage of accommodation). He may also make regulations specifying further matters that he must take into account; regulations might cover such matters as the condition of the property.

304. Subsection (2) prevents the Secretary of State from taking account of any preferences as to location that the asylum seeker may express. He may also make regulations setting out other factors he is required to ignore. Subsection (3) allows him to repeal certain of the provisions within subsection (2). There is provision in subsection (4) for regulations setting out the factors which the Secretary of State must take into consideration in providing an asylum seeker's essential living needs and which factors he may not take into consideration.

305. Subsection (5) provides that, in setting the level of support for essential living needs, the Secretary of State may limit the overall amount payable to any individual or family to a proportion of the level of income support generally available; in doing so he may recognise that the support is only of a temporary nature, and need not therefore include contributions to the replacement of items of furnishing or clothing that might be required in the longer term.

306. Subsection (7) allows the Secretary of State to disregard any preference an asylum seeker may express as to the manner in which the support is to be provided. Thus, he may disregard the preference a single person might express for self-contained accommodation and self-catering arrangements, instead making an offer of

accommodation in a hostel that provides full board. If the asylum seeker declines to take up such an offer of accommodation the Secretary of State need not make any further offer.

Section 98: Temporary provision of support

307. There may be circumstances where an asylum seeker or his dependants need support before the Home Office has the opportunity to make a formal assessment as to whether support may be provided for a person under section 95. In such cases the Secretary of State is empowered to provide support on an interim basis until a proper assessment is made, where he feels the person in question may be destitute. The support may take any form. The provision might be relied upon where it was necessary to make emergency provision for people arriving at a United Kingdom airport at a weekend, before an assessment can be made by the Home Office screening unit.

Section 99: Provision of support by local authorities

308. The specific functions of local authorities in relation to supporting asylum seekers under housing and social services legislation are removed by the provisions contained in sections 116 to 122. Section 99 empowers local authorities to provide accommodation and essential living needs for asylum seekers in accordance with the arrangements made by the Secretary of State under section 95; the support might be provided to the Secretary of State or someone with whom he has contracted. There is no power for authorities to make such provision in other circumstances.

309. It is planned to invite local authorities to bid for contracts to provide accommodation under Part VI, either individually or in consortium with other authorities or other bodies. Accordingly, section 99 gives local authorities the power to incur expenditure in preparing tenders, and to operate in collaboration with other bodies.

Section 100: Local authority and other assistance for Secretary of State

310. The Secretary of State will be looking to the providers of social housing (essentially local authorities, registered social landlords and housing associations) for assistance in the provision and management of housing accommodation, and possibly in the provision of essential living needs where these are directly associated with the provision of accommodation. This section will require such landlords to co-operate with the Secretary of State when he makes such a request, so far as is reasonable in the circumstances. What is reasonable would depend on the particular case. It would be reasonable for a landlord to co-operate providing he had suitable spare accommodation which he could put at the Secretary of State's disposal in return for appropriate reimbursement; it would not be reasonable to expect a housing association or registered social landlord to co-operate if this were in conflict with its constitution or articles of association.

311. Section 100 also requires a local authority to provide the Secretary of State with such information about their housing stock as he requests. Collecting such information would help the Secretary of State to decide which landlords to seek assistance from; or it might assist in deciding whether to designate a "reception zone" under section 101.

Section 101: Reception zones

312. The provisions of this section are intended as reserve powers that the Secretary of State would only bring into play if local authorities refused to co-operate with the Secretary of State in providing accommodation for asylum seekers. They provide that, having consulted with the local authorities of an area, their associations, and such other persons as he thinks fit, he may make an order designating a reception zone; in doing so he must set out the criteria used to select the zone for designation. The zone would typically be an area comprising a number of local authorities in which the Secretary of State felt

there was spare housing accommodation, and the potential to construct a sound base for the support of asylum seekers.

313. Once a reception zone has been designated, and it is apparent to the Secretary of State that there is unoccupied housing available in the area of a particular authority which matches the criteria used to establish the reception zone, it would be open for him to direct that authority to make available to him (or to a person with whom he has contracted for providing support) a specified amount of housing accommodation. Before making a direction, the Secretary of State is required to make regulations setting out the method by which rent and other charges are to be determined; when such amounts are to be paid; and where responsibility rests for maintenance and repairs, and any minor work required to bring the property into use. The direction, which would last for no more than five years, would specify the amount of housing to be made available. Payments would be made to local authorities by the Secretary of State for property made available in this way under the provisions of section 110.

314. Section 101 also requires the Secretary of State to make regulations providing for a dispute resolution procedure, that would be used to resolve any disputes associated with property that is subject to a direction (eg as to how payments in respect of rent are to be determined, or what the true cost of repairs is).

315. Since immigration and asylum matters are reserved functions, it would be for the Home Secretary to exercise the powers in this section. But bearing in mind that housing is a devolved function, he would want to do so only after consultation with the relevant devolved administrations in Wales, Scotland and Northern Ireland; in issuing a direction in Scotland he would need first to obtain confirmation of Scottish Ministers that the designation criteria have been met.

Section 102 and Schedule 10: Asylum Support Adjudicators

316. This section and Schedule 10 create the office of Asylum Support Adjudicator. There will be a Chief Asylum Support Adjudicator, his Deputy, and a number of other Asylum Support Adjudicators, all appointed by the Secretary of State. These adjudicators will be independent of the Secretary of State, hearing appeals against a refusal of support, or a cessation of support. The remuneration of the adjudicators and the costs of staffing their office are to be met by the Secretary of State.

Section 103: Asylum support: Appeals

317. This section provides that a person may appeal to an Asylum Support Adjudicator against a refusal of support, or the termination of support before the applicant's asylum application has been determined (eg when he is required to leave accommodation because of misbehaviour); no other matters may at present be considered by the Asylum Support Adjudicator. If the Asylum Support Adjudicator finds in favour of the applicant he may either require the Secretary of State to reconsider his decision, or he may substitute his own decision. There is to be no further route of appeal against the Asylum Support Adjudicator's decision (although judicial review will be available). Where the adjudicator has rejected an appeal, that person has no right to make a further application for support under Part VI unless there has been a material change in his circumstances. A power exists for the jurisdiction of the Asylum Support Adjudicators to be extended by regulations, at a future date, to include decisions on where support is to be provided. This section also provides that reasonable travelling costs incurred by an appellant to attend a hearing may be paid.

Section 104: Secretary of State's rules

318. This section provides that the Secretary of State may make rules governing the procedure for bringing and hearing appeals. They may cover such matters as periods of notice for bringing appeals, the burden of proof in the appeals, the admissibility of various matters as evidence, the summoning of witnesses, how adjudicators are

to proceed in the absence of the appellant, how they may determine cases without a hearing, and the publication of their decisions.

319. Subsection (3) provides that the Secretary of State should, in drawing up the rules, have regard to the objective of clearing appeals as swiftly as possible. This reflects the fact that a person appealing against a refusal of assistance is not entitled to support while he is waiting for the case to be heard.

Section 105: False representations

320. This section makes it an offence for a person to give information that he knows to be false, with a view to obtaining assistance under Part VI of the Act for himself or any other person. It also extends to failures to give information about a change in circumstances that might be relevant to the provision of support. Regulations made under Schedule 8 may require people to notify the Home Office of any change in circumstances within a reasonable period. The penalty for such an offence is a fine of up to £2,000, or three months' imprisonment.

321. This, and subsequent provisions in relation to offences and recovery (sections 106, 107, 112, 113 and 127) have similar wording to the relevant provisions in social security legislation; in this case the corresponding provision is section 112 of the Social Security Administration Act 1992 ("the 1992 Act").

Section 106: Dishonest representations

322. This section makes it a further and more serious offence for a person to obtain benefits or advantage for himself or anyone else by making dishonest representations. The section is directed at cases of serious and calculated fraud, such as where someone makes a plan to extract as much from the Home Office as possible by deception. The maximum penalty for serious fraud of this sort is correspondingly great; conviction on indictment to the Crown Court can result in imprisonment of up to seven years.

Section 107: Delay or obstruction

323. This section makes it an offence to obstruct a person carrying out functions under Part VI (either the Secretary of State or someone acting on his behalf) by either obstructing him, or failing to give him information when required to do so under the Act. It is punishable by a fine not exceeding £1,000.

Section 108: Failure of sponsor to maintain

324. This section addresses the situation where someone enters the country under a sponsored immigration arrangement (under which the sponsor normally agrees to support the immigrant for five years) and subsequently claims asylum. It makes it an offence for the sponsor to deliberately fail or refuse to maintain an immigrant in these circumstances so that he has to rely on the support arrangements created under Part VI. Subsection (3) provides that where the failure to support arises from the sponsor's lack of resources as a result of his involvement in a trade dispute, this would not constitute deliberate refusal or failure. The offence is punishable by up to three months' imprisonment or a fine not exceeding £2,500.

Section 109: Offences: supplemental

325. In the case of offences committed under sections 105, 106, 107 or 108 by corporate bodies, this section applies these offence provisions to both the corporate body itself and to the officer concerned. In the case of Scottish partnerships, subsection (4) applies the offences to both the partner himself and to the partnership.

Section 110: Payments to local authorities

326. Subsection (1) gives the Secretary of State power to make payments to local authorities or to Northern Ireland authorities in connection with the expenditure they incur in relation to asylum seekers or former asylum seekers, or their dependants. Such payments might cover the costs to the authorities of providing accommodation for use by asylum seekers (rents etc), of providing other support, or those costs that are not reflected in the local government finance settlement of providing other services for asylum seekers. Subsection (2) gives the Secretary of State power to make payments to local authorities, local authority associations (eg the Local Government Association) or Northern Ireland authorities in respect of general services provided to the Secretary of State in connection with his asylum support functions.

327. Subsection (3) gives the Secretary of State power to make payments to local authorities or local authority associations in respect of the liability to council tax that may fall to asylum seekers under the Local Government Finance Act 1992. Alternatively, it is possible to make regulations under that legislation to vary the liability for council tax of asylum seekers.

328. Subsection (4) obliges the Secretary of State to make such payments as he considers reasonable to local authorities to which he makes a direction under section 101(3) to represent the costs to the authority of complying with the direction.

329. Subsections (5) to (7) provide for payments to be made to bodies which have been made subject to directions under section 101(3).

330. Subsection (8) provides that payments under subsections (1), (2) or (3) may be made on terms and conditions determined by the Secretary of State.

331. Subsection (9) defines which Northern Ireland authorities are covered by the provisions of subsections (1) and (2).

Section 111: Grants to voluntary organisations

332. This section gives the Secretary of State power to pay grants to voluntary organisations for the provision of support to present and former asylum seekers. The Government recognises the important role that the voluntary sector plays in assisting asylum seekers and wishes to harness this in the context of the new provisions contained in Part VI. This section provides the means for doing so.

Section 112: Recovery of expenditure on support: misrepresentation etc

333. This section provides for recovery by the Secretary of State of what regulations prescribe as the monetary value of support given, under sections 95 or 98, to asylum seekers or people purporting to be asylum seekers, as a result of their having been found to have misrepresented, or failed to disclose a change of, their circumstances. It extends to recovery by the Secretary of State of the monetary value of support given by a contractor on the Secretary of State's behalf. Recovery would be through proceedings in the county court in England or Wales, or the sheriff court in Scotland.

Section 113: Recovery of expenditure on support from sponsor

334. This section makes provision that, where a person was originally admitted to this country under a sponsorship agreement, but that person has now sought asylum and is being supported under Part VI of the Act, the Secretary of State may seek a maintenance order from a magistrates' court in England or Wales, or a sheriff court in Scotland.

Section 114: Overpayments

335. This section provides for the recovery by the Secretary of State of the monetary value of any benefits provided under sections 95 or 98 as a result of an error on the part of the

Secretary of State. The value may be recovered as if it were a debt due to the Secretary of State; in addition, subsection (4) provides that regulations may be made providing for other methods of recovery, including by deductions from future support payments.

Section 115: Exclusion from benefits

336. The intention of Part VI is to substitute a new set of welfare provisions for entitlement to the majority of the existing social welfare benefits that are available to permanent residents. This section (and sections 116, 117, 120 and 121) provides the basis for this, by excluding a "person subject to immigration control" from specified benefits.

337. Subsection (1) removes entitlement from all non-contributory social security benefits in Great Britain. From commencement of this provision, all existing payments of social security benefits to asylum seekers would cease (subject to any savings or transitional provisions). Those asylum seekers who as a result were destitute would be entitled to assistance under the new support arrangements set out in Part VI. Subsection (2) makes comparable provision for Northern Ireland.

338. Subsection (3) provides that the section applies to a person subject to immigration control unless he falls within a prescribed category or description or fulfils prescribed conditions. Subsection (4) gives the Secretary of State power to remove a person from this definition for particular purposes only. For example, he might be removed in relation to disability living allowance but not in relation to income support. The power under section (3) would be used, inter alia, in relation to those people who have rights under international conventions to which the United Kingdom is party, such as the European Convention on Medical and Social Assistance and the European Social Charter; if they have entered this country lawfully such people are entitled to normal welfare benefits, even if they are seeking asylum. Subsections (5), (6), (7) and (8) make provisions as to the making of the regulations under subsection (3).

339. Subsection (9) defines "a person subject to immigration control" as someone who is in the United Kingdom unlawfully (either an illegal entrant, or someone who has overstayed his leave); someone who is here on limited leave with a condition that he will have no recourse to public funds (eg a visitor or a student); someone who is here under a maintenance undertaking; or someone whose leave has been extended to allow him to pursue an appeal. These classes embrace asylum seekers if they are subject to immigration control in this sense (an application for asylum does not itself confer an entry status or leave to remain), and a number of other persons subject to immigration control.

Section 116: Amendment of section 21 of the National Assistance Act 1948

340. This section removes all persons subject to immigration control (as defined in section 115) from entitlement to assistance under community care legislation (the National Assistance Act 1948), if their need for assistance arises solely because they are, or about to become, destitute. These provisions have hitherto been relied upon by single, destitute, asylum seekers: these people will in future be entitled to assistance under Part VI of the Act. Asylum seekers who need care and attention for more specific reasons (such as a particular physical disability or mental health problem) will retain that entitlement.

Section 117: Other restrictions on assistance: England and Wales

341. This section removes persons subject to immigration control from entitlement to a number of other forms of welfare support. Subsections (1) and (2) remove the entitlement of asylum seekers from social services assistance under legislation governing the care of old people, and measures for the prevention of ill health, where their need for assistance arise solely as a result of their destitution. Where there are other substantive reasons for access to these provisions, section 117 will not apply, and there will continue to be a right for assistance.

342. Subsection (3) removes entitlement of persons subject to immigration control to appear on a local authority housing register (and therefore to be considered for long term social housing), where their need arises solely on account of destitution. Subsections (4) and (5) disqualify a person subject to immigration control from entitlement to assistance under the homelessness legislation (Part VII of the Housing Act 1996).

Section 118: Housing authority accommodation

343. This section (which has the effect of replacing section 9(1) of the Asylum and Immigration Act 1996) ensures that, other than where it is provided under arrangements made under Part VI of the Act, tenancies of local authority housing may only be granted to persons subject to immigration control if they fall within a class specified in an order made by the Secretary of State; such an order may not extend to persons excluded from benefit under section 115 of this Act. Both in respect of this section and section 119 it is envisaged that such an order might extend to those classes of person subject to immigration control as are entitled to receive social security benefits (eg persons here on unlimited leave).

Section 119: Homelessness: Scotland and Northern Ireland

344. This section (which has the effect of replacing section 9(2) of the Asylum and Immigration Act 1996) ensures that persons subject to immigration control will only have access to the homelessness legislation in Scotland and Northern Ireland if they fall within a class specified in an order made by the Secretary of State; such an order may not extend to persons excluded from benefit under section 115 of the Act. Comparable provisions for England and Wales are contained in section 185 of the Housing Act 1996.

Section 120: Other restrictions on assistance: Scotland

345. This section replicates the effect of sections 116 and 117 with respect to Scotland, similarly removing entitlements to general social welfare provisions, to the provision of residential accommodation with nursing and the provision of care and after-care from all persons subject to immigration control, as defined in section 115(9) or, as the case may be, those excluded from benefits under section 115. Again these exclusions apply only to those whose need for access to these provisions arises solely on the basis of destitution. Where there is another substantive need for assistance, the exclusions will not apply.

346. Schedule 14 contains further amendments in relation to housing legislation. Paragraph 73 removes entitlement to protection under the Protection from Eviction Act 1977 from asylum seekers accommodated under Part VI; they can therefore be required to leave accommodation provided under Part VI without a court order having been obtained (as could any sub-tenants). Paragraphs 81 and 88 remove asylum seekers accommodated under Part VI from the security of tenure provisions contained in Part IV of the Housing Act 1985, and Part I of the Housing Act 1988 (which govern the secure and assured tenancy regimes respectively). Paragraphs 82 and 87 replicate these removals from the parallel provisions under the Housing (Scotland) Act 1987 and the Housing (Scotland) Act 1988.

Section 121: Other restrictions on assistance: Northern Ireland

347. This section makes provisions equivalent to those in sections 116 and 117 in relation to Northern Ireland health and personal social services legislation. It removes the entitlement of persons subject to immigration control to assistance under the provision governing the prevention of illness, care and after-care. It also removes all persons subject to immigration control from entitlement to assistance under general social welfare provisions, if their need for assistance arises solely as a result of destitution or anticipated destitution.

Section 122: Support for children

348. This section places a duty on the Secretary of State to offer and, if the offer is accepted, provide support under section 95 for the children and other minor dependants of asylum seekers who are in need. He is to provide them with adequate accommodation and their essential living needs.

349. Local authority social services departments may not provide assistance under the various child welfare provisions applying in different parts of the United Kingdom where the Secretary of State is complying with this duty or where there are reasonable grounds for believing that he would be required to provide support were an application for section 95 support to be made to him. This exclusion is, however, subject to any contrary provision made by regulations under subsection (11).

350. Where accommodation has been provided pursuant to the duty under this section and later withdrawn, subsections (7) to (9) provide that only the local authority within whose area the withdrawn accommodation was provided may provide assistance under the child welfare provisions.

Section 123: Backdating of benefits where person recorded as refugee

351. This section re-casts the social security backdating scheme for paying income support benefits, housing benefit and council tax benefit to those who are subsequently awarded refugee status, for any period of benefit exclusion whilst their asylum application was being determined. The new backdating arrangements will take into account the new support scheme for asylum seekers introduced by the Act.

352. Subsections (1) and (2) provide for a backdating scheme to apply to people awarded refugee status who were previously excluded from social security benefits by section 115, provided they claim within a specified period.

353. Subsections (3) to (6) make the provision needed for housing benefit and council tax benefits, which are administered by local authorities. Where the refugee has lived in more than one local authority area only one local authority will deal with any claim for backdated housing benefit and council tax benefit, and provision is made for the other local authority to supply information to the determining authority.

354. Subsections (7) and (8) provide that where a person or dependant of the claimant receives Home Office support, regulations may make provision for the determination of the value of the Home Office support package, and for the value of that support package, to be offset against the backdated payment of any benefit. The form of that package will vary according to the nature of the make-up of the accommodation provided and the arrangements with the provider. The assessment of the various packages will be based on the value to the asylum seeker of the most readily measurable package – that made up of accommodation, vouchers and cash.

Section 124: Secretary of State to be corporation sole for the purposes of Part VI

355. This section provides that the Secretary of State is to be treated as a corporation sole for the purposes of holding property under Part VI. This will assist in conveyancing, if the Secretary of State acquires property that he makes available to asylum seekers directly.

Section 125: Entry of premises

356. This section provides that a person acting on behalf of the Secretary of State may make application to a justice of the peace for a warrant to enter premises being used to provide accommodation under sections 95 or 98. Where the justice of the peace is satisfied that there is reason to believe that the supported person or any dependants of his are not resident there, or that someone other than the supported person and his dependants is living there, or that the premises are being used for a purpose other than the accommodation of the supported person or his dependants, he may grant the warrant.

357. Subsection (3) provides that, once issued, the warrant may be executed at any reasonable time and using reasonable force. In Scotland, a sheriff may exercise the power in addition to a justice of the peace.

Section 126: Information from property owners

358. This section allows the Secretary of State to require the owner or manager of property provided to accommodate asylum seekers under Part VI of the Act to supply him with information about the premises and the persons occupying the premises. This power might be used, for example, to require landlords to notify the Secretary of State when an asylum seeker had left property provided under an agreement, or when an asylum seeker was subletting the property.

Section 127: Requirement to supply information about redirection of post

359. This section allows the Secretary of State to require anyone conveying postal packets to give him information about any request from an asylum seeker for the redirection of post that may help the Secretary of Sate in the prevention or detection of offences, or in otherwise tracing and checking on asylum seekers who are in receipt of support under Part VI.

Part VII: Power to arrest, search and fingerprint

360. Part VII of the Act sets out provisions relating to powers to arrest and search and to take fingerprints from certain persons.

361. The White Paper explained that immigration officers currently have to rely on the police to perform certain tasks relating to the enforcement of immigration law and announced that, in order to reduce this dependency and ensure a more effective use of resources the Government intended to extend the existing powers of arrest of immigration officers and to provide immigration officers with powers of search, entry and seizure in respect of immigration offences equivalent to those the police already have. Part VII gives effect to this but imposes certain limitations on the exercise of these powers. The new powers – and associated safeguards – have been modelled on those contained in the Police and Criminal Evidence Act 1984 (PACE). In exercising these and other powers, immigration officers will be allowed to use reasonable force if necessary.

Section 128: Arrest without warrant

362. This section inserts a new section (section 28A) into the 1971 Act. Subsections (1), (2) and (3) reproduce the existing powers of arrest without warrant which are currently contained in sections 24(2) and 25(3) of the 1971 Act. Subsections (1) and (2) allow a constable or immigration officer to arrest someone who has committed or has attempted to commit various immigration offences contained in Part III of that Act or where there are reasonable grounds for suspecting that they have committed or attempted to commit such an offence. The offences in question include entering the country illegally; overstaying; failing to observe a condition of leave; and the new extended offence of deception created by section 28.

363. Subsections (4) and (5) allow an immigration officer to arrest without warrant someone who commits or attempts to commit certain other offences contained in part III of the 1971 Act. The offences in question include: harbouring an illegal entrant or an overstayer or someone who fails to observe a condition of their leave, and obstructing an immigration officer in the execution of his duty. Subsection (6) limits the power of arrest for obstructing an immigration officer to cases where the option of serving a summons appears impracticable or where the immigration officer has reasonable grounds for believing the arrest is necessary to prevent the suspect either causing physical injury to himself or another person or suffering physical injury or causing loss of, or damage, to property. (Constables in England, Wales and Northern Ireland already have powers to arrest for the offences referred to in subsection (3), (4) and (5) under PACE and its

equivalent in Northern Ireland. Constables in Scotland have no such statutory power, so the powers of arrest in subsection (3), (4) and (5) extend to them.)

364. The existing power of arrest does not apply to offences under section 24(1)(d) of the 1971 Act (failure to comply with a requirement to report to a medical officer of health or to be examined by such an officer) and this exception is retained.

Sections 129, 137, 138 and 140: search and arrest by warrant, search warrant safeguards, execution of warrants and detention of persons liable to examination or removal

365. Section 129 inserts a new section 28B into the 1971 Act which will enable a justice of the peace who is satisfied that there are reasonable grounds for suspecting a person who is liable to be arrested for a relevant offence is to be found on any premises to grant a warrant authorising any constable or immigration officer to enter those premises, by force if necessary, for the purposes of searching for and arresting the suspect. In Scotland, warrants for this purpose will be granted by either the sheriff or a justice of the peace who has jurisdiction in a place where the premises are situated (subsections (3) and (4) of new section 28B).

366. Section 137 inserts a new section 28J into the 1971 Act which sets out the requirements to be satisfied when an immigration officer applies for a search warrant. These are very similar to those which apply to the police under PACE. They include a requirement to state the ground of the application, the premises to be searched and, as far as possible, the persons or articles to be sought. An application for a warrant must be supported by information in writing and the officer making the application must answer on oath any questions that the person considering the application asks him. A warrant is limited to authorising entry on one occasion only.

367. Section 138 inserts a new section 28K into the 1971 Act which sets certain conditions which have to be complied with when executing warrants which again reflect conditions which apply to the police under PACE. For example, an entry and search must be within one month of the date of issue of the warrant and at a reasonable hour (unless it appears to the officer executing it that the purpose of the search might be frustrated if the latter condition is observed). If the occupier of the premises is present at the time, the immigration officer must identify himself to the occupier, produce identification showing he is an immigration officer, show the occupier the warrant and supply him with a copy of it. If the occupier is not present, but someone else who appears to be in charge of the premises is there, the same requirements apply in respect of that person. If it appears that nobody present is in charge of the premises, a copy of the warrant must be left in a prominent place on the premises.

368. A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued. An officer executing a warrant must endorse it, stating whether the persons or articles sought were found and whether any articles other than the articles which were sought were seized.

369. Subsection (2) of section 140 amends Schedule 2 to the 1971 Act to provide for the issuing to immigration officers, as well as constables, of warrants to enter premises in order to search for and arrest someone who is liable to detention.

Section 130: Search and arrest without warrant

370. This section adds a new section, section 28C, into the 1971 Act which will allow an immigration officer to enter and search any premises without a warrant for the purpose of arresting a person for an offence under section 25(1) of that Act. (Police officers already have a corresponding power by virtue of the provisions of PACE.)

371. Subsection (2) restricts the exercise of this power to the extent that it is reasonably required for that purpose and to cases where the immigration officer has reasonable grounds for believing that the person whom he is seeking is on the premises. Before

exercising this power of entry, the immigration officer must produce identification showing that he is an immigration officer.

Section 131: Entry and search of premises

372. This section specifies the conditions under which a justice of the peace (in Scotland the sheriff or a justice of the peace) may issue a warrant to an immigration officer authorising him to enter specified premises and to search for, seize and retain material which is of substantial value to the investigation of a specific offence under sections 24(1)(a)-(f), 24A or 25 of the 1971 Act and which is likely to be relevant evidence. Items subject to legal privilege, excluded material and special procedure material (as defined under the Police and Criminal Evidence Act 1984 and the police and Criminal Evidence (Northern Ireland) Order 1989) are excluded.

Section 132: Entry and search of premises following arrest

373. This section inserts a new section 28E into the 1971 Act. It provides that where someone has been arrested for an offence under Part III of the 1971 Act, and the arrest was made somewhere other than at a police station, an immigration officer may enter and search the premises in which the person was when arrested – or any premises in which he was immediately before he was arrested – for evidence relating to the offence for which the arrest was made. This power of entry and search may only be exercised if the immigration officer has reasonable grounds for believing that there is relevant evidence on the premises and only to the extent that it is reasonably required for the purposes of discovering such evidence (subsection (3)).

374. Subsection (5) allows an officer searching premises under this section to seize and retain anything he finds which he has reasonable grounds for believing is relevant evidence. However, he may not seize such items where there are reasonable grounds for believing that they are subject to legal privilege (subsection (6)).

375. The section also amends Schedule 2 to the 1971 Act by adding a new paragraph 25A which provides a corresponding power of entry and search where someone is arrested under that Schedule or is detained under that Schedule by an immigration officer having been arrested by a constable. Thus, an immigration officer will have the power, with the written consent of a senior immigration officer (except where obtaining such consent would impede the effectiveness of the search), to enter any premises occupied or controlled by the arrested person or in which that person was when he was arrested or immediately before he was arrested in order to search for "relevant documents". The officer may seize and retain any documents which he has reasonable grounds for believing are such documents, subject again to his not being able to do this where there are reasonable grounds for believing the documents in question are items subject to legal privilege. ("Relevant documents" for the purposes of this paragraph are any documents which might establish the identity, nationality or citizenship of the arrested person or indicate the place from which he has travelled to the United Kingdom or to which he is proposing to go.) Any documents seized may not be retained for longer than is necessary in view of the purpose for which the person was arrested.

Section 133: Entry and search of premises following an arrest under section 25(1) of the 1971 Act

376. This section inserts a new section 28F into the 1971 Act, giving an immigration officer the power, with the written consent of a senior immigration officer (except where obtaining such consent would impede the effectiveness of the investigation), to enter and search any premises occupied or controlled by a person arrested for the offence in section 25(1) of the 1971 Act. As with other similar powers, this power may be exercised only if the officer has reasonable grounds for suspecting that there is relevant evidence on the premises and only to the extent that it is reasonably required for the purpose of discovering such evidence.

Section 134: Searching arrested persons

377. This section adds a new section 28G to Part III of the 1971 Act and a new paragraph 25B to Schedule 2 to that Act. Where someone has been arrested, other than at a police station, for an offence under Part III of that Act or has been arrested under Schedule 2 of the 1971 Act, an immigration officer will be allowed to search them if the immigration officer has reasonable grounds for believing that the arrested person may present a danger to himself or others. In addition, the arrested person may be searched for anything which might be used to assist his escape from lawful custody or anything which might be evidence relating to the offence under Part III of the 1971 Act or, in the case of Schedule 2, which might establish his identity, nationality or citizenship or indicate the place from which he has travelled to the United Kingdom or to which he is proposing to go. The power may be used only if the officer has reasonable grounds for believing that the arrested person may have these things concealed on him and only to the extent that it is reasonably required for the purpose of discovering that thing. Items which may be searched for under these powers may be seized and retained apart from items subject to legal privilege. Items which might be used to inflict injury or assist in an escape which were seized under Schedule 2 powers must be returned once the person is either no longer in custody or in the custody of a court but released on bail.

Section 135: Searching persons in police custody

378. This section will allow an immigration officer to search somebody who has been arrested for an offence under either Part III or Schedule 2 of the 1971 Act and is in custody at a police station (or, additionally, in the case of the former, in police detention at a place other than a police station). The arrested person may be searched at any time to see whether he has with him anything which he might use to cause physical injury to himself or others, to damage property, to interfere with evidence or to assist his escape. He may also be searched in Part III cases for anything the officer has reasonable grounds for believing is evidence relating to the offence or (in the case of Schedule 2) a document which might establish his identity, nationality or citizenship or indicate the place from which he has travelled to the United Kingdom or to which he is proposing to go. The intention is not to duplicate searches but to allow an immigration officer to carry out a search where he is the arresting officer.

379. This power of search may be exercised only to the extent considered necessary for the purpose of discovering such items, must be carried out by a person of the same sex as the person being searched and does not permit an "intimate search" (as defined by section 65 of PACE). If any items of the kind described are found they may be seized. The person from whom something is seized must be told why it is being taken unless he is violent, or appears likely to become violent, or is incapable of understanding what is said to him. Anything that is seized under these powers may be retained either by the police or by an immigration officer (depending on the nature of the item). However, an immigration officer may not retain anything seized under Schedule 2 powers for longer than is necessary or when the person from whom it was seized is either no longer in custody or has been released on bail.

Section 136: Access and copying

380. This section lays down certain conditions relating to the handling of material which has been seized by an immigration officer under the new powers. The occupier of the premises on which the material was seized – or the person who had custody or control of material immediately before it was seized – must be given a record of what was seized within a reasonable time if they ask for this to be done. The section goes on to provide that the person who had custody or control of seized material immediately before it was seized or someone acting on their behalf must also be given access (under supervision) to the seized material and, if they so request, a photograph or copy of the material unless there are reasonable grounds for believing that to do so would prejudice

any investigation being conducted under the 1971 Act or any criminal proceedings or the exercise of any functions in connection which the material was seized.

Section 141: Fingerprinting

381. This section extends the current power to fingerprint those subject to immigration control contained in paragraph 18(2) of Schedule 2 and paragraph 2(4) of Schedule 3 to the 1971 Act and section 3 of the Asylum and Immigration Appeals Act 1993 (which is repealed by this Act and consolidated with the new powers).

382. Subsection (3) provides that fingerprints cannot be taken from a child under the age of sixteen unless an adult is present who fulfils one of the criteria set out in the remainder of the subsection. Subsection (3)(a) specifies that the adult can be the child's parent or guardian. Subsection (3)(b) specifies that the person can be an adult who has temporarily taken responsibility for the child, for example, a social worker. In addition, subsection (12) provides that the authority of a chief immigration officer, or another authorised person of equivalent grade in the case of prison officers, constables and officers of the Secretary of State, has to be given before the fingerprints of a child under the age of sixteen can be taken. Subsection (13) makes it clear that the safeguards relating to the fingerprinting of children do not apply where the authorised person (as defined by subsection (5)) reasonably believes that the individual whose fingerprints are being taken is over the age of 16.

383. Subsection (5) sets out those categories of person who are authorised to take fingerprints. They are:

(a) a constable (this includes all police ranks);

(b) an immigration officer (which includes a chief immigration officer or an inspector);

(c) a prison officer (of any rank);

(d) an officer of the Secretary of State authorised for this purpose (IND staff at Croydon might be authorised for this purpose); or

(e) a person employed by a contractor in connection with the discharge of the contractor's duties under a detention centre contract. In effect, this means that the staff who are employed to manage the day-to-day running of a detention centre would be able to take the fingerprints of detainees if they were liable to be fingerprinted under this section.

384. Subsection (7)(a) provides that fingerprints can be taken from an individual (category A) who, when required on arrival to produce a valid passport or some other form of documentation (eg a national identity card) that establishes their identity and nationality or citizenship, fails to do so. But subsection (10) provides that fingerprints can only be taken under subsection (7)(a) if an immigration officer considers that the person concerned did not have a reasonable excuse for failing to produce the documentation.

385. Subsection (7)(b) provides that fingerprints can be taken from any person (category B) who has been refused leave to enter the United Kingdom but is given temporary admission pending removal from the United Kingdom where the immigration officer reasonably suspects that the individual concerned will not comply with the reporting or residence requirements of that temporary admission. Subsection (11) provides that fingerprints cannot be taken from a person in category B unless this has been approved by a chief immigration officer.

386. Subsection (7)(c)(i) provides that fingerprints can be taken where an immigration officer has given removal directions in respect of illegal entrants, overstayers, those who breach the conditions of their temporary admission, those who have obtained leave to remain by deception, and the dependants of any of these. Subsection (7)(c)(ii)

provides that fingerprints can be taken where the Secretary of State gives directions in respect of illegal entrants and subsection (7)(c)(iii) provides for fingerprints to be taken where removal directions have been given in respect of someone who is subject to a deportation order.

387. Subsection (7)(d) provides for fingerprints to be taken from those individuals (category D) who have been arrested under paragraph 17 of Schedule 2 to the 1971 Act.

388. Subsection (7)(e) provides for an asylum seeker's (category E) fingerprints to be taken.

389. Subsection (7)(f) provides that dependants (category F), as defined by subsection (14), of those persons in categories A to E can have their fingerprints taken. Subsection (14) defines the term "dependant" for these purposes as a spouse or child under the age of eighteen who does not have right of abode or indefinite leave to enter or remain in the United Kingdom. This means, for example, that where a person in category A-E has a spouse or child who is a British citizen, the British citizen will not have their fingerprints taken under this section.

Section 142: Attendance for fingerprinting

390. This section provides for a person who is liable to be fingerprinted to attend for fingerprinting at a specified place. It also gives certain time limits within which this must take place. In addition, it also provides a constable or immigration officer with the power to arrest without warrant anyone who fails to comply with the conditions as set out in this section.

Section 143: Destruction of fingerprints

391. This section provides for the destruction of fingerprint records within a specified period. This specified period will be such a period as the Secretary of State specifies in an Order. If no period is specified then the period within which fingerprints must be destroyed is ten years.

392. Subsection (2) provides that where a person proves that he is a British citizen or a Commonwealth citizen who has the right of abode in the United Kingdom under section 2(1)(b) of the 1971 Act then any fingerprints that have been taken must be destroyed.

393. Subsection (3) provides that where an asylum seeker is granted indefinite leave to enter or remain, his fingerprints must be destroyed. In all other cases, fingerprints must be destroyed on the grant of leave to enter or remain.

394. Subsection (5) provides that where a person has failed to comply with the conditions imposed on him under paragraph 21(2) of Schedule 2 to the 1971 Act, then subsection (4) will not apply. This means that where an individual has absconded from temporary admission his fingerprints can be retained. If he has not absconded, his fingerprints must be destroyed after his removal.

395. Subsection (6) provides that fingerprints taken after directions have been given (from persons referred to as "C" in section 141) must be destroyed if the directions cease to have effect.

396. Subsection (7) provides that if a person is fingerprinted because he has been given removal directions in respect of a deportation order, and the deportation order is later revoked, his fingerprints are to be destroyed.

397. Subsection (8) provides for the destruction of fingerprints taken from those arrested under Schedule 2 of the 1971 Act (referred to as "D" in section 141) once they are released.

Section 144: Other methods of collecting data about physical characteristics

398. This section provides the Secretary of State with a power to make regulations to enable data to be collected about people's external physical characteristics other than by taking fingerprints. By virtue of section 166(5), these regulations are to be made by the affirmative resolution procedure. This section has been included to take account of the new systems of identification that are currently being developed which will eventually provide an alternative means of uniquely identifying individuals to replace fingerprinting.

Section 145: Codes of practice

399. This section allows the Secretary of State to direct that immigration officers must have regard to relevant provisions of the existing PACE codes of practice in England Wales and Northern Ireland when exercising specified powers to arrest, question, search persons, enter and search premises, take fingerprints or seize property. The direction issued under this section must specify which powers are covered, which provisions of the existing PACE codes of practice are relevant and list any modifications necessary to ensure consistency of approach. The section will reinforce the existing commitment under section 67(9) of PACE which requires any person charged with the duty to investigate offences to have regard to the relevant PACE codes of practice. It will extend this commitment to immigration officers when they are exercising specified powers under Schedule 2 to the 1971 Act and also to any authorised person exercising the power to take fingerprints conferred by section 141 of this Act.

Section 146: Use of force

400. This section confers on immigration officers the power to use reasonable force, if necessary, in the exercise of the powers under the 1971 Act or the provisions of this Act. In addition, it provides for immigration officers, prison officers, constables, authorised officers of the Secretary of State and employees at detention centres to use reasonable force when exercising the power to take fingerprints under sections 141 or 142 or regulations under section 144.

Schedule 14

401. Paragraph 61 of Schedule 14 makes it clear that the powers of immigration officers, prison officers and the police, contained in paragraph 18(2) of Schedule 2 to the 1971 Act, to take all "reasonably necessary" steps to confirm the identity of someone who is detained under paragraph 16 of Schedule 2 or paragraph 2 of Schedule 3 to the 1971 Act includes the power to take fingerprints. Paragraph 80(4) amends PACE to provide that the power to fingerprint under PACE does not affect the power to fingerprint under this Act.

402. Paragraph 90(4) amends the Police and Criminal Evidence (Northern Ireland) Order 1989 to provide that the power to fingerprint under the Order does not affect the power to fingerprint under this Act.

Part VIII: Detention centres and detained persons

403. This part of the Act is concerned with placing on a statutory footing the operation and management of immigration detention centres which are used solely to hold those detained under the provisions of the 1971 Act. In particular, it sets out the powers and responsibilities of detainee custody officers and requires the introduction of statutory rules for the regulation and management of detention centres.

Section 148: Management of detention centres

404. This section requires the appointment of a detention centre manager at every detention centre. In the case of contracted-out centres, the appointed person must be a detainee

custody officer whose appointment is approved by the Secretary of State. In appointing a manager of a contracted-out centre the Secretary of State will have regard to the experience and qualities necessary for running a custodial institution. The section also provides that the functions of detention centre managers will be set out in detention centre rules.

405. The section requires that detention centre managers who are private contractors must not deal with disciplinary matters in relation to detainees, nor may they authorise segregation or restraint of detainees other than in an emergency. These limitations are similar to those that apply to directors of private prisons.

Section 149: Contracting out of certain detention centres

406. The section allows the Secretary of State to contract out the provision or running of detention centres or parts of detention centres. The section also provides for the Secretary of State to appoint a contract monitor, who will be a Crown servant, for each contracted-out centre; sets out the key functions of the monitor; and requires the contractor to assist the monitor in the exercise of these functions.

Section 150: Contracted-out functions at directly managed detention centres

407. This section allows the Secretary of State to enter into a contract for the fulfilment of specific functions at a detention centre which is being directly managed by the Home Office. It will allow detainee custody officers, or prisoner custody officers, to be provided by another person, while management of the centre would remain a matter for the Secretary of State. There are currently no detention centres that are directly managed, nor are there any plans to introduce any in the foreseeable future, but the Government considers that it would be imprudent to rule out the possibility at some future point.

Section 151: Intervention by Secretary of State

408. This section sets out the circumstances in which the Secretary of State can intervene in the management of a detention centre and the appointment of a Controller. The powers of the Controller are set out and provision is made for termination of his appointment by the Secretary of State. It is envisaged that only a person with sufficient relevant experience will be appointed as a Controller and that this person will take charge of a centre for a temporary period, until order is restored.

Section 152: Visiting Committees and inspections

409. This section provides for the appointment of Visiting Committees for every detention centre and makes provision for the functions of those committees to be set out in detention centre rules. In particular, the section requires that the rules must include functions of the type listed in subsection (3). Every member of a Visiting Committee for a detention centre is entitled to enter the centre at any time and have free access to any part of it and to every person detained there. Visiting Committee members are drawn from a wide range of occupational backgrounds, reflecting the needs of detained persons, and are subject to Home Office departmental security checks before being appointed.

Section 153: Detention centre rules

410. This section provides that the Secretary of State must make rules for the operation and management of detention centres.

Section 154: Detainee custody officers

411. This section sets out the arrangements for the appointment of detainee custody officers. It provides for the Secretary of State to issue certificates of authorisation without

which they will not be allowed to perform custodial or escort functions. All detainee custody officers will be subject to pre-employment checks in addition to Home Office departmental security vetting.

Section 155: Custodial functions and discipline etc. at detention centres

412. This section establishes that only detainee custody officers or, in certain circumstances, prison officers or prisoner custody officers, may discharge custodial functions at detention centres.

Section 156: Arrangements for the provision of escorts and custody

413. This section allows the Secretary of State to make arrangements for the escorting of detained persons by contract or otherwise. It provides a regulatory framework for the movement and escorting of detained persons which is designed to be transparent and to safeguard staff, detainees and members of the public.

Section 157: Short-term holding facilities

414. This section allows the extension of any provision of Part VIII, to the extent not already so extended, to short-term holding facilities. It also allows the Secretary of State to make rules for the regulation and management of short-term holding facilities.

Section 158: Wrongful disclosure of information

415. This section creates an offence of disclosure, by certain persons employed at detention centres or in accordance with escort arrangements, of information relating to detained persons. The offence will apply to information acquired in the course of employment where disclosure is made outside the course of duty and has not been authorised by the Secretary of State. This will not prevent detainee custody officers from disclosing information when ordered to do so by a court, nor is the offence restricted only to information about those currently detained.

Section 159: Power of constable to act outside his jurisdiction

416. This section provides constables who are engaged in undertaking escorts of detainees with the power to conduct such escorts outside their jurisdiction.

Schedule 11: Detainee custody officers

417. This Schedule makes further provision relating to detainee custody officers and, where relevant, follows similar provisions in the Criminal Justice Act 1991 relating to prisoner custody officers. Paragraph 1 creates an offence of obtaining a certificate of authorisation by false pretences, and paragraphs 4 and 5 create offences of assaulting or obstructing detainee custody officers acting in the course of their duties. These mirror existing offences in relation to prisoner custody officers at privately managed prisons.

418. Paragraph 2 details the powers and duties of detainee custody officers when exercising custodial functions, and paragraph 3 allows any detainee custody officer to perform functions of a custodial nature at a short-term holding facility. This reflects the limited scope and transitory nature of such facilities. The Schedule also provides in paragraph 6 that detainee custody officers performing escorting functions should be readily identifiable before an offence can be committed in the escort context under paragraphs 4 and 5. It also provides for the suspension and revocation of certificates of authorisation so that the Secretary of State has powers to deal, in appropriate circumstances, with detainee custody officers who are subject to complaints or disciplinary proceedings.

Schedule 12: Discipline etc. at detention centres

419. Paragraph 1 of Schedule 12 allows detention centre rules to make provision for the measurement and photographing of detained persons. Paragraph 2 provides powers, similar to those available in private prisons, to require detained persons to be tested for drugs and alcohol. Paragraph 3 provides powers to require detained persons to be medically examined where there are reasonable grounds for believing that they are suffering from highly contagious diseases to be specified by order and where an authorisation has been given by the Secretary of State and is in force.

420. The Schedule also creates offences of helping a detainee to escape or attempt to escape from a detention centre and of importing any alcohol or other thing into detention centres, contrary to detention centre rules. These reflect equivalent offences which already exist in respect of prisons.

421. The Schedule also provides for the posting of penalty notices at detention centres and short-term holding facilities, which are intended to draw attention to the penalties to which a person may be liable if he commits an offence under paragraphs 4, 5 or 6 of this Schedule.

Schedule 13: Escort arrangements

422. Paragraph 1 of Schedule 13 provides for the appointment of a Crown servant as an escort monitor and sets out his various duties. Paragraph 2 details powers and duties of detainee custody officers when escorting detained persons which mirror those available to those exercising custodial functions. Paragraph 3 makes provision in relation to detained persons who breach the disciplinary provisions of detention centre rules while under escort, providing that such persons will be deemed, for the purposes of disciplinary action, to be in the custody of the head of the establishment to which they are being escorted.

Part IX: Registrar's certificates: procedure

423. Part IX of the Bill makes procedural changes designed to tackle abuse of the immigration system by those who are prepared to enter into marriage for the purpose of evading immigration control. There is evidence to show that a large number of sham marriages are being contracted in the United Kingdom every year.

424. Part IX is to be read with section 24 which places a duty on superintendent registrars to notify immigration authorities of suspected cases of sham marriages. Part IX amends the Marriage Act 1949, which applies to England and Wales, to ensure that both parties attend to give notice of marriage, thus giving the superintendent registrar the opportunity to meet both parties and obtain suitable documentation from them as to their name, age, marital status (where someone has been previously married) and nationality. The provisions also allow only one procedure for giving notice by reducing the existing 21 day waiting period to a 15 day notice period (which can be reduced on the authority of the Registrar General in exceptional circumstances) and abolishing the existing licence procedure by which parties can currently give one day's notice of their intention to marry. Part IX also applies to Northern Ireland in respect of evidence of name, age, marital status and nationality and amends the Marriages (Ireland) Act 1844 and the Marriage Law (Ireland) Amendment Act 1863.

425. The provisions apply to all civil and religious marriages after civil preliminaries. The Act does not extend to marriages after ecclesiastical preliminaries because the procedure involved is considered already sufficiently detailed to ensure that the system is not abused for immigration advantage. There is no evidence that religious marriages after ecclesiastic preliminaries are abused for immigration advantage.

Section 160: Abolition of certificate by licence

426. At present in England and Wales notice by civil preliminaries may be given either by certificate (which requires a 21 day waiting period) or by licence (where there is a one day waiting period). For England and Wales this section provides for the existing procedures to be replaced by a single procedure with a 15 day waiting period, with a discretion vested in the Registrar General to reduce in exceptional circumstances.

427. Subsections (1) to (4) remove references in the Marriage Act 1949 to marriages "with licence" and remove references to the notification period of 21 days and substitute 15 days. Subsection (5) amends the Marriage Act 1949 to empower the Registrar General to reduce the 15 day notice period in exceptional circumstances, eg unforeseen work contracts or military service in a foreign country, or serious illness of a close relative. The Registrar General is given power to make procedural regulations and to delegate his authority to a superintendent registrar in prescribed circumstances with provision for an appeal to the Registrar General against the superintendent registrar's refusal to reduce the 15 day waiting period. Provision is made for fees to be prescribed.

Section 161: Notice of marriage

428. At present in England and Wales, for a certificate without licence where both parties to the marriage reside in the same registration district, only one notice of marriage is required. Where they reside in different registration districts, notice must be given in each district, although there are no restrictions as to which party should give that notice. This section amends the Marriage Act 1949 so that each party is required to personally appear before the superintendent registrar to give notice of marriage in the registration district where they reside. It also adds to the matters that have to be stated a requirement to state nationality. Equivalent provision is made for Northern Ireland.

429. For marriages in England and Wales, subsection (1) results in a duty on both partners to give notice; subsection (2) results in a duty to give details of nationality; and subsection (3) means that marriages may only be solemnised on production of two superintendent registrar's certificates, ie one from each party. Subsection (4) provides for details of nationality to be stated in a notice of marriage given in Northern Ireland.

Section 162: Power to require evidence

430. This section empowers registrars to request specified evidence in order to establish the name and surname, age, marital status and nationality of the person giving notice. A superintendent registrar may also request specified evidence relating to the other party to the proposed marriage in exceptional circumstances, for example where the evidence seen leads the registrar to suspect that the information given in respect of that party may be inaccurate. Such evidence may be requested at any time after notice of marriage has been given but only up until the superintendent registrar's certificates for the marriage have been issued. Subsection (1) applies the power to England and Wales and amends the Marriage Act 1949. Subsection (2) applies the power to Northern Ireland and amends the Marriage Law (Ireland) Amendment Act 1863.

Section 163: Refusal to issue certificate

431. This section provides a superintendent registrar with a statutory power to refuse to issue his authority for a marriage where he is not satisfied that one or both of the couple is legally free to contract the marriage. It also provides for an appeal procedure to the Registrar General against the superintendent registrar's refusal to issue a certificate and for persons making frivolous representations against a marriage to be liable for any costs incurred. Subsections (1) and (2) apply this provision to England and Wales. Subsections (3) and (4) make similar amendments for Northern Ireland.

Schedule 14: Consequential amendments

432. Paragraphs 1 and 2 of Schedule 14 amend the Marriages (Ireland) Act 1844 and the Marriage Law (Ireland) Amendment Act 1863 to provide for the nationality of each party to be provided. Paragraphs 3 to 32 amend the Marriage Act 1949 in England and Wales to remove reference to marriage by "licence", where appropriate replace references to "a certificate" with "certificates", and replace references to "either party" to "each party" to reflect the fact that there is to be a standardised system for giving notice of marriage with both parties being required to give notice and a registrar solemnising marriage needing to see two certificates.

433. Paragraph 15 substitutes the existing section 33 of the Marriage Act 1949 and sets out provisions dealing with the validity of certificates and notices. It allows for the fact that the parties may not give notice of marriage on the same day and provides that, when calculating whether a certificate is valid, the period of validity is to run from the date on which the first notice is given.

434. Paragraph 30 amends section 75 of the Marriage Act 1949 so as to remove reference to the licence procedure and brings the offence committed by the superintendent registrar in line with the new 15 day waiting period.

435. Paragraphs 37 to 42 make consequential amendments to the Marriage (Registrar General's Licence) Act 1970 and the Family Law Reform Act 1969; paragraph 77 makes a consequential amendment to the Marriage Act 1983.

Part X: Miscellaneous and Supplemental

Section 164: Institution of proceedings

436. The White Paper stated that the Government was considering whether there were changes which could be made to improve the prosecution process as it applies to immigration offences.

437. Part VII of the Bill gives effect to the Government's proposals to increase the powers of arrest of immigration officers and to provide immigration officers with powers of search, entry and seizure in respect of immigration offences equivalent to those currently possessed by the police. However, those changes do not alter the procedures for bringing prosecutions under which the documentary evidence needed to support a prosecution is currently submitted to the Crown Prosecution Service (CPS) via a police officer and that officer's Criminal Justice Unit. This is because of the terms of the Prosecution of Offenders Act 1985, which established the CPS and which specifies that the CPS are under a duty to take over the conduct of proceedings instituted on behalf of a police force but not by an immigration officer.

438. The Government has concluded that there is no operational need for the police to be involved in forwarding papers to the CPS where they have not been involved in the investigation. This section amends the Prosecution of Offences Act to require the CPS to take over the conduct of any criminal proceedings instituted by an immigration officer acting in his official capacity.

Section 165: Procedural requirements as to applications

439. Since November 1996 all applications (with the exception of those from asylum seekers, work permit holders and EEA nationals) for a variation of leave have to be made on an application form. It has also been the policy since the introduction of application forms that applications for leave to remain by people without leave must also be made on an application form (with the same exceptions as above). Applications made in any other way or on incomplete application forms are rejected as invalid.

440. Section 165 introduces a new section 31A into the 1971 Act which brings these arrangements on to the face of the statute. It provides that applications made on a

particular basis, to be defined by way of regulations, have to be made on a prescribed form. In addition, subsection (2) provides that the Secretary of State can prescribe any particular procedural or other steps that have to be followed, for example, the provision of a photograph.

441. The remainder of this Part of the Act makes provision applicable to the Act as a whole.