

*Status: Point in time view as at 03/03/2010.*

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## SCHEDULES

### SCHEDULE 1

Section 3

#### CITIZENSHIP CEREMONY, OATH AND PLEDGE

1 The following shall be substituted for section 42 of the British Nationality Act 1981 (c. 61) (registration and naturalisation: fee and oath)—

#### **“42 Registration and naturalisation: citizenship ceremony, oath and pledge**

- (1) A person of full age shall not be registered under this Act as a British citizen unless he has made the relevant citizenship oath and pledge specified in Schedule 5 at a citizenship ceremony.
- (2) A certificate of naturalisation as a British citizen shall not be granted under this Act to a person of full age unless he has made the relevant citizenship oath and pledge specified in Schedule 5 at a citizenship ceremony.
- (3) A person of full age shall not be registered under this Act as a British overseas territories citizen unless he has made the relevant citizenship oath and pledge specified in Schedule 5.
- (4) A certificate of naturalisation as a British overseas territories citizen shall not be granted under this Act to a person of full age unless he has made the relevant citizenship oath and pledge specified in Schedule 5.
- (5) A person of full age shall not be registered under this Act as a British Overseas citizen or a British subject unless he has made the relevant citizenship oath specified in Schedule 5.
- (6) Where the Secretary of State thinks it appropriate because of the special circumstances of a case he may—
  - (a) disapply any of subsections (1) to (5), or
  - (b) modify the effect of any of those subsections.
- (7) Sections 5 and 6 of the Oaths Act 1978 (c. 19) (affirmation) apply to a citizenship oath; and a reference in this Act to a citizenship oath includes a reference to a citizenship affirmation.

#### **42A Registration and naturalisation: fee**

- (1) A person shall not be registered under a provision of this Act as a citizen of any description or as a British subject unless any fee payable by virtue of this Act in connection with the registration has been paid.
- (2) A certificate of naturalisation shall not be granted to a person under a provision of this Act unless any fee payable by virtue of this Act in connection with the grant of the certificate has been paid.

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#### **42B Registration and naturalisation: timing**

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

- 2 The following shall be substituted for Schedule 5 to the British Nationality Act 1981 (c. 61)—

#### “SCHEDULE 5

##### CITIZENSHIP OATH AND PLEDGE

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

##### **OATH**

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

##### **PLEDGE**

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

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

##### **OATH**

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

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## PLEDGE

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

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

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

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

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

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

4 For subsection (1)(d) substitute—

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

5 In subsection (2)(c)—

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

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

7 After subsection (3) insert—

“(3A) Regulations under subsection (1)(d) to (de) may, in particular—

- (a) enable the Secretary of State to designate or authorise a person to exercise a function (which may include a discretion) in connection with a citizenship ceremony or a citizenship oath or pledge;
- (b) require, or enable the Secretary of State to require, a local authority to provide specified facilities and to make specified arrangements in connection with citizenship ceremonies;
- (c) impose, or enable the Secretary of State to impose, a function (which may include a discretion) on a local authority or on a registrar.

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(3B) In subsection (3A)—

“local authority” means—

- (a) in relation to England and Wales, a county council, a county borough council, a metropolitan district council, a London Borough Council and the Common Council of the City of London, and
- (b) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39), and

“registrar” means—

- (a) in relation to England and Wales, a superintendent registrar of births, deaths and marriages (or, in accordance with section 8 of the Registration Service Act 1953 (c. 37), a deputy superintendent registrar), and
- (b) in relation to Scotland, a district registrar within the meaning of section 7(12) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49).”

8       The Secretary of State may make a payment to a local authority in respect of anything done by the authority in accordance with regulations made by virtue of section 41(3A) of the British Nationality Act 1981 (c. 61).

9       (1) A local authority must—

- (a) comply with a requirement imposed on it by regulations made by virtue of that section, and
- (b) carry out a function imposed on it by regulations made by virtue of that section.

(2) A local authority on which a requirement or function is imposed by regulations made by virtue of that section—

- (a) may provide facilities or make arrangements in addition to those which it is required to provide or make, and
- (b) may make a charge for the provision of facilities or the making of arrangements under paragraph (a) which does not exceed the cost of providing the facilities or making the arrangements.

## SCHEDULE 2

Section 15

### NATIONALITY: REPEAL OF SPENT PROVISIONS

1       The following provisions of the British Nationality Act 1981 (c. 61) shall cease to have effect—

- (a) section 7(registration as British citizen by virtue of residence or employment),
- (b) section 8(registration as British citizen by virtue of marriage),
- (c) section 9(registration as British citizen by virtue of father’s status),
- (d) section 19(registration as British Dependent Territories citizen by virtue of residence),
- (e) section 20(registration as British Dependent Territories citizen by virtue of marriage),

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- (f) section 21 (registration as British Dependent Territories citizen by virtue of father's status),
  - (g) section 27(2) (entitlement of minor to registration as British Overseas citizen),
  - (h) section 28 (registration as British Overseas citizen by virtue of marriage), and
  - (i) section 33 (registration as British subject of certain women by virtue of earlier entitlement).
- 2 Nothing in this Schedule has any effect in relation to a registration made under a provision before its repeal.

### SCHEDULE 3

Section 54

#### WITHHOLDING AND WITHDRAWAL OF SUPPORT

##### **Modifications etc. (not altering text)**

- C1** Sch. 3 applied (with modifications) (25.2.2008) by [The Independent Police Complaints Commission \(Immigration and Asylum Enforcement Functions\) Regulations 2008 \(S.I. 2008/212\)](#), regs. 1, 5(b), **Sch. 2**

##### *Ineligibility for support*

- 1 (1) A person to whom this paragraph applies shall not be eligible for support or assistance under—
- (a) section 21 or 29 of the National Assistance Act 1948 (c. 29) (local authority: accommodation and welfare),
  - (b) section 45 of the Health Services and Public Health Act 1968 (c. 46) (local authority: welfare of elderly),
  - (c) section 12 or 13A of the Social Work (Scotland) Act 1968 (c. 49) (social welfare services),
  - (d) Article 7 or 15 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)) (prevention of illness, social welfare, &c.),
  - [<sup>F1</sup>(e) section 254 of, and Schedule 20 to, the National Health Service Act 2006, or section 192 of, and Schedule 15 to, the National Health Service (Wales) Act 2006 (social services),]
  - (f) section 29(1)(b) of the Housing (Scotland) Act 1987 (c. 26) (interim duty to accommodate in case of apparent priority need where review of a local authority decision has been requested),
  - (g) section 17, 23C, 24A or 24B of the Children Act 1989 (c. 41) (welfare and other powers which can be exercised in relation to adults),
  - (h) Article 18, 35 or 36 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) (welfare and other powers which can be exercised in relation to adults),
  - (i) sections 22, 29 and 30 of the Children (Scotland) Act 1995 (c. 36) (provisions analogous to those mentioned in paragraph (g)),

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- (j) section 188(3) or 204(4) of the Housing Act 1996 (c. 52) (accommodation pending review or appeal),
  - (k) section 2 of the Local Government Act 2000 (c. 22) (promotion of well-being),
  - (l) a provision of the Immigration and Asylum Act 1999 (c. 33), or
  - (m) a provision of this Act.
- (2) A power or duty under a provision referred to in sub-paragraph (1) may not be exercised or performed in respect of a person to whom this paragraph applies (whether or not the person has previously been in receipt of support or assistance under the provision).
- (3) An approval or directions given under or in relation to a provision referred to in sub-paragraph (1) shall be taken to be subject to sub-paragraph (2).

#### **Textual Amendments**

- F1** Sch. 3 para. 1(1)(e) substituted (E.W.) (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\), ss. 2, 8, Sch. 1 para. 229](#) (with Sch. 3 Pt. 1)

#### *Exceptions*

- 2 (1) Paragraph 1 does not prevent the provision of support or assistance—
- (a) to a British citizen, or
  - (b) to a child, or
  - (c) under or by virtue of regulations made under paragraph 8, 9 or 10 below, or
  - (d) in a case in respect of which, and to the extent to which, regulations made by the Secretary of State disapply paragraph 1, or
  - (e) in circumstances in respect of which, and to the extent to which, regulations made by the Secretary of State disapply paragraph 1.
- (2) Regulations under sub-paragraph (1)(d) may confer a discretion on the Secretary of State.
- (3) Regulations under sub-paragraph (1)(e) may, in particular, disapply paragraph 1 to the provision of support or assistance by a local authority to a person where the authority—
- (a) has taken steps in accordance with guidance issued by the Secretary of State to determine whether paragraph 1 would (but for the regulations) apply to the person, and
  - (b) has concluded on the basis of those steps that there is no reason to believe that paragraph 1 would apply.
- (4) Regulations under sub-paragraph (1)(d) or (e) may confer a discretion on an authority.
- (5) A local authority which is considering whether to give support or assistance to a person under a provision listed in paragraph 1(1) shall act in accordance with any relevant guidance issued by the Secretary of State under sub-paragraph (3)(a).
- (6) A reference in this Schedule to a person to whom paragraph 1 applies includes a reference to a person in respect of whom that paragraph is disappplied to a limited

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extent by regulations under sub-paragraph (1)(d) or (e), except in a case for which the regulations provide otherwise.

#### Commencement Information

- II** Sch. 3 para. 2 wholly in force at 8.1.2003; Sch. 3 para. 2 not in force at Royal Assent see s. 162(2); Sch. 3 para. 2 in force at 8.12.2002 for certain purposes and at 8.1.2003 so far as not already in force by S.I. 2002/2811, art. 2, Sch.

- 3 Paragraph 1 does not prevent the exercise of a power or the performance of a duty if, and to the extent that, its exercise or performance is necessary for the purpose of avoiding a breach of—
- (a) a person's Convention rights, or
  - (b) a person's rights under the Community Treaties.

#### *First class of ineligible person: refugee status abroad*

- 4 (1) Paragraph 1 applies to a person if he—
- (a) has refugee status abroad, or
  - (b) is the dependant of a person who is in the United Kingdom and who has refugee status abroad.
- (2) For the purposes of this paragraph a person has refugee status abroad if—
- (a) he does not have the nationality of an EEA State, and
  - (b) the government of an EEA State other than the United Kingdom has determined that he is entitled to protection as a refugee under the Refugee Convention.

#### *Second class of ineligible person: citizen of other EEA State*

- 5 Paragraph 1 applies to a person if he—
- (a) has the nationality of an EEA State other than the United Kingdom, or
  - (b) is the dependant of a person who has the nationality of an EEA State other than the United Kingdom.

#### *Third class of ineligible person: failed asylum-seeker*

- 6 (1) Paragraph 1 applies to a person if—
- (a) he was (but is no longer) an asylum-seeker, and
  - (b) he fails to cooperate with removal directions issued in respect of him.
- (2) Paragraph 1 also applies to a dependant of a person to whom that paragraph applies by virtue of sub-paragraph (1).

#### *Fourth class of ineligible person: person unlawfully in United Kingdom*

- 7 Paragraph 1 applies to a person if—
- (a) he is in the United Kingdom in breach of the immigration laws within the meaning of [F<sup>2</sup>section 50A of the British Nationality Act 1981], and
  - (b) he is not an asylum-seeker.

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#### Textual Amendments

- F2** Words in Sch. 3 para. 7(a) substituted (13.1.2010) by [Borders, Citizenship and Immigration Act 2009](#) (c. 11), **ss. 48(6), 58(2)**; S.I. 2009/2731, art. 4(g)

*[<sup>F3</sup>Fifth class of ineligible person: failed asylum-seeker with family*

#### Textual Amendments

- F3** Sch. 3 para. 7A and preceding cross-heading inserted (1.12.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#) (c. 19), **ss. 9(1), 48(1)-(3)**; S.I. 2004/2999, **art. 2**, Sch. (with transitional provisions in art. 4)

- 7A (1) Paragraph 1 applies to a person if—
- (a) he—
    - (i) is treated as an asylum-seeker for the purposes of Part VI of the Immigration and Asylum Act 1999 (c. 33) (support) by virtue only of section 94(3A) (failed asylum-seeker with dependent child), or
    - (ii) is treated as an asylum-seeker for the purposes of Part 2 of this Act by virtue only of section 18(2),
  - (b) the Secretary of State has certified that in his opinion the person has failed without reasonable excuse to take reasonable steps—
    - (i) to leave the United Kingdom voluntarily, or
    - (ii) to place himself in a position in which he is able to leave the United Kingdom voluntarily,
  - (c) the person has received a copy of the Secretary of State’s certificate, and
  - (d) the period of 14 days, beginning with the date on which the person receives the copy of the certificate, has elapsed.
- (2) Paragraph 1 also applies to a dependant of a person to whom that paragraph applies by virtue of sub-paragraph (1).
- (3) For the purpose of sub-paragraph (1)(d) if the Secretary of State sends a copy of a certificate by first class post to a person’s last known address, the person shall be treated as receiving the copy on the second day after the day on which it was posted.
- (4) The Secretary of State may by regulations vary the period specified in sub-paragraph (1)(d).]

#### Modifications etc. (not altering text)

- C2** Sch. 3 para. 7A: power to repeal conferred (prosp.) by [Immigration, Asylum and Nationality Act 2006](#) (c. 13), **ss. 44, 62**

#### *Travel assistance*

- 8 The Secretary of State may make regulations providing for arrangements to be made enabling a person to whom paragraph 1 applies by virtue of paragraph 4 or 5 to leave the United Kingdom.



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**Commencement Information**

- I2** Sch. 3 para. 8 wholly in force at 8.1.2003; Sch. 3 para. 8 not in force at Royal Assent see s. 162(2); Sch. 3 para. 8 in force at 8.12.2002 for certain purposes and at 8.1.2003 so far as not already in force by S.I. 2002/2811, art. 2, [Sch.](#)

*Temporary accommodation*

- 9 (1) The Secretary of State may make regulations providing for arrangements to be made for the accommodation of a person to whom paragraph 1 applies pending the implementation of arrangements made by virtue of paragraph 8.
- (2) Arrangements for a person by virtue of this paragraph—
- (a) may be made only if the person has with him a dependent child, and
  - (b) may include arrangements for a dependent child.

**Commencement Information**

- I3** Sch. 3 para. 9 wholly in force at 8.1.2003; Sch. 3 para. 9 not in force at Royal Assent see s. 162(2); Sch. 3 para. 9 in force at 8.12.2002 for certain purposes and at 8.1.2003 so far as not already in force by S.I. 2002/2811, art. 2, [Sch.](#)

- 10 (1) The Secretary of State may make regulations providing for arrangements to be made for the accommodation of a person if—
- (a) paragraph 1 applies to him by virtue of paragraph 7, and
  - (b) he has not failed to cooperate with removal directions issued in respect of him.
- (2) Arrangements for a person by virtue of this paragraph—
- (a) may be made only if the person has with him a dependent child, and
  - (b) may include arrangements for a dependent child.

**Commencement Information**

- I4** Sch. 3 para. 10 wholly in force at 8.1.2003; Sch. 3 para. 10 not in force at Royal Assent see s. 162(2); Sch. 3 para. 10 in force at 8.12.2002 for certain purposes and at 8.1.2003 so far as not already in force by S.I. 2002/2811, art. 2, [Sch.](#)

*Assistance and accommodation: general*

- 11 Regulations under paragraph 8, 9 or 10 may—
- (a) provide for the making of arrangements under a provision referred to in paragraph 1(1) or otherwise;
  - (b) confer a function (which may include the exercise of a discretion) on the Secretary of State, a local authority or another person;
  - (c) provide that arrangements must be made in a specified manner or in accordance with specified principles;
  - (d) provide that arrangements may not be made in a specified manner;

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- (e) require a local authority or another person to have regard to guidance issued by the Secretary of State in making arrangements;
- (f) require a local authority or another person to comply with a direction of the Secretary of State in making arrangements.

#### **Commencement Information**

**I5** Sch. 3 para. 11 wholly in force at 8.1.2003; Sch. 3 para. 11 not in force at Royal Assent see s. 162(2); Sch. 3 para. 11 in force at 8.12.2002 for certain purposes and at 8.1.2003 so far as not already in force by [S.I. 2002/2811](#), [art. 2](#), [Sch.](#)

- 12 (1) Regulations may, in particular, provide that if a person refuses an offer of arrangements under paragraph 8 or fails to implement or cooperate with arrangements made for him under that paragraph—
- (a) new arrangements may be made for him under paragraph 8, but
  - (b) new arrangements may not be made for him under paragraph 9.
- (2) Regulations by virtue of this paragraph may include exceptions in the case of a person who—
- (a) has a reason of a kind specified in the regulations for failing to implement or cooperate with arrangements made under paragraph 8, and
  - (b) satisfies any requirements of the regulations for proof of the reason.

#### **Commencement Information**

**I6** Sch. 3 para. 12 wholly in force at 8.1.2003; Sch. 3 para. 12 not in force at Royal Assent see s. 162(2); Sch. 3 para. 12 in force at 8.12.2002 for certain purposes and at 8.1.2003 so far as not already in force by [S.I. 2002/2811](#), [art. 2](#), [Sch.](#)

#### *Offences*

- 13 (1) A person who leaves the United Kingdom in accordance with arrangements made under paragraph 8 commits an offence if he—
- (a) returns to the United Kingdom, and
  - (b) requests that arrangements be made for him by virtue of paragraph 8, 9 or 10.
- (2) A person commits an offence if he—
- (a) requests that arrangements be made for him by virtue of paragraph 8, 9 or 10, and
  - (b) fails to mention a previous request by him for the making of arrangements under any of those paragraphs.
- (3) A person who is guilty of an offence under this paragraph shall be liable on summary conviction to imprisonment for a term not exceeding six months.

#### *Information*

- 14 (1) If it appears to a local authority that paragraph 1 applies or may apply to a person in the authority's area by virtue of [<sup>F4</sup>paragraph 6, 7 or 7A], the authority must inform the Secretary of State.

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- (2) A local authority shall act in accordance with any relevant guidance issued by the Secretary of State for the purpose of determining whether paragraph 1 applies or may apply to a person in the authority's area by virtue of [<sup>F4</sup>paragraph 6, 7 or 7A] .

#### Textual Amendments

- F4** Words in Sch. 3 para. 14(1)(2) substituted (1.12.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\), ss. 9\(2\), 48\(1\)-\(3\)](#); S.I. 2004/2999, [art. 2](#), Sch. (with transitional provisions in [art. 4](#))

#### Power to amend Schedule

- 15 The Secretary of State may by order amend this Schedule so as—
- to provide for paragraph 1 to apply or not to apply to a class of person;
  - to add or remove a provision to or from the list in paragraph 1(1);
  - to add, amend or remove a limitation of or exception to paragraph 1.

#### Commencement Information

- I7** Sch. 3 para. 15 wholly in force at 8.1.2003; Sch. 3 para. 15 not in force at Royal Assent see s. 162(2); Sch. 3 para. 15 in force at 8.12.2002 for certain purposes and at 8.1.2003 so far as not already in force by [S.I. 2002/2811, art. 2, Sch.](#)

#### Orders and regulations

- 16 (1) An order or regulations under this Schedule must be made by statutory instrument.
- (2) An order or regulations under this Schedule may—
- make provision which applies generally or only in specified cases or circumstances or only for specified purposes;
  - make different provision for different cases, circumstances or purposes;
  - make transitional provision;
  - make consequential provision (which may include provision amending a provision made by or under this or another Act).
- (3) An order under this Schedule, regulations under paragraph 2(1)(d) or (e) or other regulations which include consequential provision amending an enactment shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4) Regulations under this Schedule to which sub-paragraph (3) does not apply shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Commencement Information

- I8** Sch. 3 para. 16 wholly in force at 8.1.2003; Sch. 3 para. 16 not in force at Royal Assent see s. 162(2); Sch. 3 para. 16 in force at 8.12.2002 for certain purposes and at 8.1.2003 so far as not already in force by [S.I. 2002/2811, art. 2, Sch.](#)

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### *Interpretation*

17 (1) In this Schedule—

“asylum-seeker” means a person—

- (a) who is at least 18 years old,
- (b) who has made a claim for asylum (within the meaning of section 18(3)), and
- (c) whose claim has been recorded by the Secretary of State but not determined,

“Convention rights” has the same meaning as in the Human Rights Act 1998 (c. 42),

“child” means a person under the age of eighteen,

“dependant” and “dependent” shall have such meanings as may be prescribed by regulations made by the Secretary of State,

“EEA State” means a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time),

“local authority”—

- (a) in relation to England and Wales, has the same meaning as in section 129(3),
- (b) in relation to Scotland, has the same meaning as in section 129(4), and
- (c) in relation to Northern Ireland, means a health service body within the meaning of section 133(4)(d) and the Northern Ireland Housing Executive (for which purpose a reference to the authority’s area shall be taken as a reference to Northern Ireland),

“the Refugee Convention” means the Convention relating to the status of Refugees done at Geneva on 28th July 1951 and its Protocol, and

“removal directions” means directions under Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry, &c.), under Schedule 3 to that Act (deportation) or under section 10 of the Immigration and Asylum Act 1999 (c. 33) (removal of person unlawfully in United Kingdom).

(2) For the purpose of the definition of “asylum-seeker” in sub-paragraph (1) a claim is determined if—

- (a) the Secretary of State has notified the claimant of his decision,
- (b) no appeal against the decision can be brought (disregarding the possibility of an appeal out of time with permission), and
- (c) any appeal which has already been brought has been disposed of.

(3) For the purpose of sub-paragraph (2)(c) an appeal is disposed of when it is no longer pending for the purpose of—

- (a) Part 5 of this Act, or
- (b) the Special Immigration Appeals Commission Act 1997 (c. 68).

(4) The giving of directions in respect of a person under a provision of the Immigration Acts is not the provision of assistance to him for the purposes of this Schedule.

*Status: Point in time view as at 03/03/2010.*

**Changes to legislation:** Nationality, Immigration and Asylum Act 2002 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## <sup>F5</sup>SCHEDULE 4

### THE ASYLUM AND IMMIGRATION TRIBUNAL

#### Textual Amendments

- F5** Sch. 4 omitted (15.2.2010) by virtue of [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#), art. 1, **Sch. 1 para. 30** (with Sch. 4)

#### *Membership*

.....

#### *Presidency*

.....

#### *Judicial Assistance*

.....

#### *Proceedings*

.....

#### *Staff*

.....

#### *Money*

.....

#### *Delegation*

.....

PROSPECTIVE

#### <sup>F5</sup>*Training etc.*

<sup>F5</sup>13

.....

PROSPECTIVE

#### <sup>F5</sup>*Oaths*

<sup>F5</sup>14

.....

*Status: Point in time view as at 03/03/2010.*

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## F<sup>6</sup>SCHEDULE 5

### Textual Amendments

**F6** Sch. 5 repealed (4.4.2005) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), [ss. 26\(5\)\(b\), 47, 48\(1\)-\(3\)](#), [Sch. 4](#); S.I. 2005/565, [art. 2](#) (with savings in arts. 3-9)

### *Membership*

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

### *Presidency*

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

### *Proceedings*

- 5 The Tribunal shall sit at times and places determined by the Lord Chancellor.
- 6 The Tribunal may sit in more than one division.
- 7 (1) The jurisdiction of the Tribunal may be exercised by such number of its members as the President may direct.
- (2) A direction under this sub-paragraph—

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- (a) may relate to specified proceedings or proceedings of a specified kind,
- (b) may enable jurisdiction to be exercised by a single member,
- (c) may require the member hearing proceedings, or a specified number of the members hearing proceedings, to be legally qualified, and
- (d) may be varied or revoked by a further direction.

#### *Staff*

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

#### *Money*

- 9 The Lord Chancellor—
- (a) may pay remuneration and allowances to members of the Tribunal,
  - (b) may pay remuneration and allowances to staff of the Tribunal, and
  - (c) may defray expenses of the Tribunal.
- 10 The Lord Chancellor may pay compensation to a person who ceases to be a member of the Tribunal if the Lord Chancellor thinks it appropriate because of special circumstances.

#### *Interpretation: legally qualified member*

- 11 (1) For the purpose of this Schedule a member of the Tribunal is legally qualified if he—
- (a) has a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41),
  - (b) is an advocate or solicitor in Scotland of at least seven years' standing,
  - (c) is a member of the Bar of Northern Ireland, or a <sup>F7</sup>solicitor of the Court of Judicature of Northern Ireland], of at least seven years' standing, or
  - (d) is appointed by the Lord Chancellor as a legally qualified member.
- (2) A person may be appointed by the Lord Chancellor under sub-paragraph (1)(d) only if he has legal or other experience which in the Lord Chancellor's opinion makes him suitable for appointment as a legally qualified member.

#### **Textual Amendments**

- F7** Words in Act substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), [Sch. 11 para. 5](#); [S.I. 2009/1604](#), art. 2(d)

*Status: Point in time view as at 03/03/2010.*

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## SCHEDULE 6

Section 114

### IMMIGRATION AND ASYLUM APPEALS: TRANSITIONAL PROVISION

#### *“Commencement”*

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

#### *Adjudicator*

2           Where a person is an adjudicator under section 57 of the Immigration and Asylum Act 1999 (c. 33) immediately before commencement his appointment shall have effect after commencement as if made under section 81 of this Act.

#### *Tribunal*

- 3           (1) Where a person is a member of the Immigration Appeal Tribunal immediately before commencement his appointment shall have effect after commencement as if made under Schedule 5.
- (2) Where a person is a member of staff of the Immigration Appeal Tribunal immediately before commencement his appointment shall have effect after commencement as if made under Schedule 5.

#### *Earlier appeal*

- 4           In the application of section 96—
- (a) a reference to an appeal or right of appeal under a provision of this Act includes a reference to an appeal or right of appeal under the Immigration and Asylum Act 1999,
  - (b) a reference to a requirement imposed under this Act includes a reference to a requirement of a similar nature imposed under that Act,
  - (c) a reference to a statement made in pursuance of a requirement imposed under a provision of this Act includes a reference to anything done in compliance with a requirement of a similar nature under that Act, and
  - (d) a reference to notification by virtue of this Act includes a reference to notification by virtue of any other enactment.

#### *Saving*

- 5           (1) This Schedule is without prejudice to the power to include transitional provision in an order under section 162.
- (2) An order under that section may, in particular, provide for a reference to a provision of Part 5 of this Act to be treated as being or including a reference (with or without modification) to a provision of the Immigration and Asylum Act 1999 (c. 33).



*Status: Point in time view as at 03/03/2010.*

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## SCHEDULE 7

Section 114

### IMMIGRATION AND ASYLUM APPEALS: CONSEQUENTIAL AMENDMENTS

#### *Immigration Act 1971 (c. 77)*

- 1 In section 33(4) of the Immigration Act 1971 (c. 77) (pending appeal: interpretation) for paragraphs (a) and (b) substitute “in accordance with section 104 of the Nationality, Immigration and Asylum Act 2002 (pending appeals)”.
- 2 In paragraph 2A(9) of Schedule 2 to that Act (control of entry: person with continuing leave) for “Part IV of the Immigration and Asylum Act 1999” substitute “ Part 5 of the Nationality, Immigration and Asylum Act 2002 (immigration and asylum appeals) ”.
- 3 In paragraph 4(4) of that Schedule (examination and detention of documents) for “an appeal under this Act” substitute “ an appeal under the Nationality, Immigration and Asylum Act 2002 ”.
- 4 In paragraph 8(2) of that Schedule (time within which directions may be given) after “United Kingdom” insert “ (ignoring any period during which an appeal by him under the Immigration Acts is pending) ”.
- 5 In paragraph 25 of that Schedule (rules) for “section 22 of this Act” substitute “ section 106 of the Nationality, Immigration and Asylum Act 2002 (appeals) ”.
- 6 In paragraph 29 of that Schedule (bail pending appeal)—
  - (a) in sub-paragraph (1), for the words from “section” to “1999” substitute “ Part 5 of the Nationality, Immigration and Asylum Act 2002 ”, and
  - (b) for the words “Appeal Tribunal” substitute, in each place, “ Immigration Appeal Tribunal ”.
- 7 In paragraph 2(2) of Schedule 3 to that Act (deportation) for “section 18 of this Act” substitute “ section 105 of the Nationality, Immigration and Asylum Act 2002 (notice of decision) ”.
- 8 For paragraph 3 of that Schedule (deportation: effect of appeal) substitute—
  - “3 So far as they relate to an appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 against a decision of the kind referred to in section 82(2)(j) or (k) of that Act (decision to make deportation order and refusal to revoke deportation order), paragraphs 29 to 33 of Schedule 2 to this Act shall apply for the purposes of this Schedule as if the reference in paragraph 29(1) to Part I of that Schedule were a reference to this Schedule.”

#### *House of Commons Disqualification Act 1975 (c. 24)*

- 9 In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (disqualifying offices) for “Adjudicator appointed for the purposes of the Immigration and Asylum Act 1999.” substitute “ Adjudicator appointed for the purposes of Part 5 of the Nationality, Immigration and Asylum Act 2002. ”.

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*Northern Ireland Assembly Disqualification Act 1975 (c. 25)*

- 10 In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (disqualifying offices) for “Adjudicator appointed for the purposes of the Immigration and Asylum Act 1999.” substitute “ Adjudicator appointed for the purposes of Part 5 of the Nationality, Immigration and Asylum Act 2002. ”.

*Race Relations Act 1976 (c. 74)*

- 11 In section 53(1) (restriction of proceedings) for “Part IV of the Immigration and Asylum Act 1999” substitute “ Part 5 of the Nationality, Immigration and Asylum Act 2002 ”.

12 Section 57A (immigration cases) shall be amended as follows—

- (a) in subsection (1)(a) for “Part IV of the 1999 Act” substitute “ Part 5 of the 2002 Act ”,
- (b) in subsection (5) for the definition of “the Immigration Acts” substitute—  
““the Immigration Acts” has the meaning given by section 158 of the 2002 Act;”,
- (c) in that subsection in the definition of “immigration appellate body” for “the 1999 Act” substitute “ Part 5 of the 2002 Act ”,
- (d) in that subsection for the definition of “immigration authority” substitute—  
““immigration authority” means the Secretary of State, an immigration officer or a person responsible for the grant or refusal of entry clearance (within the meaning of section 33(1) of the Immigration Act 1971 (c. 77));”,
- (e) in that subsection in the definition of “pending” for “Part IV of the 1999 Act” substitute “ Part 5 of the 2002 Act ”,
- (f) in that subsection in the definition of “relevant decision” for “Part IV of the 1999 Act” substitute “ Part 5 of the 2002 Act ”,
- (g) in that subsection in the definition of “relevant immigration proceedings” for “Part IV of the 1999 Act” substitute “ Part 5 of the 2002 Act ”, and
- (h) in that subsection for the definition of “the 1999 Act” substitute—  
““the 2002 Act” means the Nationality, Immigration and Asylum Act 2002;”.

13 F8 .....

**Textual Amendments**

**F8** Sch. 7 para. 13 repealed (1.10.2007) by [Equality Act 2006 \(c. 3\)](#), ss. 91, 93, [Sch. 4](#) (with s. 92); [S.I. 2007/2603](#), [art. 2\(d\)](#) (subject to [art. 3](#))

- 14 In section 65(7)(b) (help for aggrieved person) for “Part IV of the Immigration and Asylum Act 1999” substitute “ Part 5 of the Nationality, Immigration and Asylum Act 2002 ”.

15 F9 .....

*Status: Point in time view as at 03/03/2010.*

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### Textual Amendments

- F9** Sch. 7 para. 15 repealed (1.10.2007) by [Equality Act 2006 \(c. 3\)](#), ss. 91, 93, [Sch. 4](#) (with s. 92); [S.I. 2007/2603](#), [art. 2\(d\)](#) (subject to [art. 3](#))

### *Courts and Legal Services Act 1990 (c. 41)*

- 16 In Schedule 11 to the Courts and Legal Services Act 1990 (judges &c. barred from legal practice) for “Adjudicator for the purposes of the Immigration and Asylum Act 1999 (other than Asylum Support Adjudicator)” substitute “ Adjudicator appointed for the purposes of Part 5 of the Nationality, Immigration and Asylum Act 2002 ”.

### *Tribunals and Inquiries Act 1992 (c. 53)*

- 17 In paragraph 22 of Schedule 1 to the Tribunals and Inquiries Act 1992 (tribunals under the supervision of the Council on Tribunals)—
- (a) in sub-paragraph (a), for “section 57 of the Immigration and Asylum Act 1999” substitute “ section 81 of the Nationality, Immigration and Asylum Act 2002 ”, and
  - (b) in sub-paragraph (b), for “section 56 of that Act” substitute “ section 100 of that Act ”.

### *Judicial Pensions and Retirement Act 1993 (c. 8)*

- 18 In Part II of Schedule 1 to the Judicial Pensions and Retirement Act 1993 (offices which may be qualifying judicial offices) for “Adjudicator for the purposes of the Immigration and Asylum Act 1999 (other than Asylum Support Adjudicator)” substitute “Adjudicator appointed for the purposes of Part 5 of the Nationality, Immigration and Asylum Act 2002”.
- 19 In Schedule 5 to that Act (retirement provisions: the relevant offices) for “Adjudicator for the purposes of the Immigration and Asylum Act 1999 (other than Asylum Support Adjudicator)” substitute “Adjudicator appointed for the purposes of Part 5 of the Nationality, Immigration and Asylum Act 2002”.

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

- 20 The following shall be substituted for section 2 of the Special Immigration Appeals Commission Act 1997 (jurisdiction: appeals)—

#### **“2 Jurisdiction: appeals**

- (1) A person may appeal to the Special Immigration Appeals Commission against a decision if—
- (a) he would be able to appeal against the decision under section 82(1) or 83(2) of the Nationality, Immigration and Asylum Act 2002 but for a certificate of the Secretary of State under section 97 of that Act (national security, &c.), or

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- (b) an appeal against the decision under section 82(1) or 83(2) of that Act lapsed under section 99 of that Act by virtue of a certificate of the Secretary of State under section 97 of that Act.
- (2) The following provisions shall apply, with any necessary modifications, in relation to an appeal against an immigration decision under this section as they apply in relation to an appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002—
- (a) section 3C of the Immigration Act 1971 (c. 77) (continuation of leave pending variation decision),
  - (b) section 78 of the Nationality, Immigration and Asylum Act 2002 (no removal while appeal pending),
  - (c) section 79 of that Act (deportation order: appeal),
  - (d) section 82(3) of that Act (variation or revocation of leave to enter or remain: appeal),
  - (e) section 84 of that Act (grounds of appeal),
  - (f) section 85 of that Act (matters to be considered),
  - (g) section 86 of that Act (determination of appeal),
  - (h) section 87 of that Act (successful appeal: direction),
  - (i) section 96 of that Act (earlier right of appeal),
  - (j) section 104 of that Act (pending appeal),
  - (k) section 105 of that Act (notice of immigration decision), and
  - (l) section 110 of that Act (grants).
- (3) The following provisions shall apply, with any necessary modifications, in relation to an appeal against the rejection of a claim for asylum under this section as they apply in relation to an appeal under section 83(2) of the Nationality, Immigration and Asylum Act 2002—
- (a) section 85(4) of that Act (matters to be considered),
  - (b) section 86 of that Act (determination of appeal),
  - (c) section 87 of that Act (successful appeal: direction), and
  - (d) section 110 of that Act (grants).
- (4) An appeal against the rejection of a claim for asylum under this section shall be treated as abandoned if the appellants leaves the United Kingdom.
- (5) A person may bring or continue an appeal against an immigration decision under this section while he is in the United Kingdom only if he would be able to bring or continue the appeal while he was in the United Kingdom if it were an appeal under section 82(1) of that Act.
- (6) In this section “immigration decision” has the meaning given by section 82(2) of the Nationality, Immigration and Asylum Act 2002.”
- 21 Section 2A of that Act (human rights) shall cease to have effect.
- 22 Section 4 of that Act (determination of appeals) shall cease to have effect.
- 23 In section 5 of that Act (procedure)—
- (a) in subsections (1)(a) and (b) and (2) omit “or 2A”, and
  - (b) after subsection (2) insert—

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“(2A) Rules under this section may, in particular, do anything which may be done by rules under section 106 of the Nationality, Immigration and Asylum Act 2002 (appeals: rules).”

24 Section 7A of that Act (pending appeals) shall cease to have effect.

25 In paragraph 5 of Schedule 1 to that Act—

(a) in sub-paragraph (b)(i), for “section 57(2) of the Immigration and Asylum Act 1999” substitute “section 81(3)(a) of the Nationality, Immigration and Asylum Act 2002”, and

(b) in sub-paragraph (b)(ii), for “paragraph 1(3) of Schedule 2” substitute “paragraph 11 of Schedule 5”.

26 Schedule 2 to that Act shall cease to have effect.

*Immigration and Asylum Act 1999 (c. 33)*

27 In section 23(1) of the Immigration and Asylum Act 1999 (monitoring refusal of entry clearance) for “section 60(5)” there shall be substituted “section 90 or 91 of the Nationality, Immigration and Asylum Act 2002”.

28 In section 53(4) of that Act (bail) for “this Act” there shall be substituted “the Nationality, Immigration and Asylum Act 2002”.

29 (1) Paragraph 9 of Schedule 4 to that Act (appeals: procedure: Convention cases) shall be amended as follows—

(a) in sub-paragraph (1)(a), omit “(4), (5)”, and

(b) omit sub-paragraphs (4) and (5).

(2) This paragraph is without prejudice to—

(a) the effect after commencement of this paragraph of a certificate issued before commencement, or

(b) the power of the Secretary of State after the commencement of this paragraph to issue a certificate in respect of a claim made before commencement.

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

30 **F10** .....

**Textual Amendments**

**F10** Sch. 7 para. 30 repealed (14.3.2005) by [Prevention of Terrorism Act 2005 \(c. 2\), s. 16\(2\)\(3\)\(4\)](#)

*Proceeds of Crime Act 2002 (c. 29)*

31 The following shall be substituted for paragraph 4 of Schedule 2 to the Proceeds of Crime Act 2002 (lifestyle offences: England and Wales: people trafficking)—

“4 (1) An offence under section 25, 25A or 25B of the Immigration Act 1971 (c. 77) (assisting unlawful immigration etc.).

(2) An offence under section 145 of the Nationality, Immigration and Asylum Act 2002 (traffic in prostitution).”

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- 32 In paragraph 4 of Schedule 4 to that Act (lifestyle offences: Scotland: people trafficking) for “section 25(1) of the Immigration Act 1971 (assisting illegal entry etc.)” there shall be substituted “ section 25, 25A or 25B of the Immigration Act 1971 (assisting unlawful immigration etc.) ”.
- 33 The following shall be substituted for paragraph 4 of Schedule 5 to that Act (lifestyle offences: Northern Ireland: people trafficking)—
- “4 (1) An offence under section 25, 25A or 25B of the Immigration Act 1971 (assisting unlawful immigration etc.).
- (2) An offence under section 145 of the Nationality, Immigration and Asylum Act 2002 (traffic in prostitution).”

## SCHEDULE 8

Section 125

### CARRIERS’ LIABILITY

- 1 The Immigration and Asylum Act 1999 (c. 33) shall be amended as follows.

#### Commencement Information

- 19** Sch. 8 para. 1 partly in force; Sch. 8 para. 1 not in force at Royal Assent see s. 162(2); Sch. 8 para. 1 in force at 14.11.2002 and 8.12.2002 for certain purposes by [S.I. 2002/2811, art. 2, Sch.](#)

- 2 (1) Section 32 (penalty for carrying clandestine entrant) shall be amended as follows.
- (2) After subsection (1)(a) insert—
- “(aa) he arrives in the United Kingdom concealed in a rail freight wagon,”.
- (3) For subsection (2) substitute—
- “(2) The Secretary of State may require a person who is responsible for a clandestine entrant to pay—
- (a) a penalty in respect of the clandestine entrant;
- (b) a penalty in respect of any person who was concealed with the clandestine entrant in the same transporter.
- (2A) In imposing a penalty under subsection (2) the Secretary of State—
- (a) must specify an amount which does not exceed the maximum prescribed for the purpose of this paragraph,
- (b) may, in respect of a clandestine entrant or a concealed person, impose separate penalties on more than one of the persons responsible for the clandestine entrant, and
- (c) may not impose penalties in respect of a clandestine entrant or a concealed person which amount in aggregate to more than the maximum prescribed for the purpose of this paragraph.”
- (4) For subsection (4) substitute—
- “(4) Where a penalty is imposed under subsection (2) on the driver of a vehicle who is an employee of the vehicle’s owner or hirer—

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- (a) the employee and the employer shall be jointly and severally liable for the penalty imposed on the driver (irrespective of whether a penalty is also imposed on the employer), and
  - (b) a provision of this Part about notification, objection or appeal shall have effect as if the penalty imposed on the driver were also imposed on the employer (irrespective of whether a penalty is also imposed on the employer in his capacity as the owner or hirer of the vehicle).
- (4A) In the case of a detached trailer, subsection (4) shall have effect as if a reference to the driver were a reference to the operator.”
- (5) In subsection (5)—
- (a) in paragraph (a) for the second “or” substitute “ and ”, and
  - (b) in paragraphs (b) and (c) for “or” substitute “ and ”.
- (6) After subsection (5) insert—
- “(5A) In the case of a clandestine entrant to whom subsection (1)(aa) applies, the responsible person is—
- (a) where the entrant arrived concealed in a freight train, the train operator who, at the train’s last scheduled stop before arrival in the United Kingdom, was responsible for certifying it as fit to travel to the United Kingdom, or
  - (b) where the entrant arrived concealed in a freight shuttle wagon, the operator of the shuttle-train of which the wagon formed part.”
- (7) In subsection (6)(a) and (b) for “or” substitute “ and ”.
- (8) After subsection (6) insert—
- “(6A) Where a person falls within the definition of responsible person in more than one capacity, a separate penalty may be imposed on him under subsection (2) in respect of each capacity.”

#### **Commencement Information**

**I10** Sch. 8 para. 2 partly in force; Sch. 8 para. 2 not in force at Royal Assent see s. 162(2); Sch. 8 para. 2 in force at 14.11.2002 and 8.12.2002 for certain purposes by [S.I. 2002/2811](#), [art. 2](#), [Sch.](#)

3 After section 32 insert—

#### **“32A Level of penalty: code of practice**

- (1) The Secretary of State shall issue a code of practice specifying matters to be considered in determining the amount of a penalty under section 32.
- (2) The Secretary of State shall have regard to the code (in addition to any other matters he thinks relevant)—
  - (a) when imposing a penalty under section 32, and
  - (b) when considering a notice of objection under section 35(4).
- (3) Before issuing the code the Secretary of State shall lay a draft before Parliament.

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- (4) After laying the draft code before Parliament the Secretary of State may bring the code into operation by order.
- (5) The Secretary of State may from time to time revise the whole or any part of the code and issue the code as revised.
- (6) Subsections (3) and (4) also apply to a revision or proposed revision of the code.”

#### Commencement Information

**I11** Sch. 8 para. 3 partly in force; Sch. 8 para. 3 not in force at Royal Assent see s. 162(2); Sch. 8 para. 3 in force at 14.11.2002 and 8.12.2002 for certain purposes by [S.I. 2002/2811](#), [art. 2](#), [Sch.](#)

- 4 The heading of section 33 (code of practice) becomes “ Prevention of clandestine entrants: code of practice ”.

#### Commencement Information

**I12** Sch. 8 para. 4 partly in force; Sch. 8 para. 4 not in force at Royal Assent see s. 162(2); Sch. 8 para. 4 in force at 8.12.2002 for certain purposes by [S.I. 2002/2811](#), [art. 2](#), [Sch.](#)

- 5 In section 33(2)(b) omit “both Houses of”.

#### Commencement Information

**I13** Sch. 8 para. 5 partly in force; Sch. 8 para. 5 not in force at Royal Assent see s. 162(2); Sch. 8 para. 5 in force at 8.12.2002 for certain purposes by [S.I. 2002/2811](#), [art. 2](#), [Sch.](#)

- 6 (1) Section 34 (defence) shall be amended as follows.
- (2) For subsection (1) substitute—
 

“(1) A person (“the carrier”) shall not be liable to the imposition of a penalty under section 32(2) if he has a defence under this section.”
  - (3) In subsection (3)(c) omit the first “that”.
  - (4) After subsection (3) insert—
 

“(3A) It is also a defence for the carrier to show that—

    - (a) he knew or suspected that a clandestine entrant was or might be concealed in a rail freight wagon, having boarded after the wagon began its journey to the United Kingdom;
    - (b) he could not stop the train or shuttle-train of which the wagon formed part without endangering safety;
    - (c) an effective system for preventing the carriage of clandestine entrants was in operation in relation to the train or shuttle-train; and
    - (d) on the occasion in question the person or persons responsible for operating the system did so properly.”
  - (5) Omit subsection (5).



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(6) For subsection (6) substitute—

“(6) Where a person has a defence under subsection (2) in respect of a clandestine entrant, every other responsible person in respect of the clandestine entrant is also entitled to the benefit of the defence.”

#### Commencement Information

**I14** Sch. 8 para. 6 partly in force; Sch. 8 para. 6 not in force at Royal Assent see s. 162(2); Sch. 8 para. 6 in force at 8.12.2002 for certain purposes by [S.I. 2002/2811, art. 2, Sch.](#)

7 (1) Section 35 (notification and objection) shall be amended as follows.

(2) In subsection (2)(d)(i) for “must” substitute “ may ”.

(3) For subsections (3) to (8) substitute—

“(3) Subsection (4) applies where a person to whom a penalty notice is issued objects on the ground that—

- (a) he is not liable to the imposition of a penalty, or
- (b) the amount of the penalty is too high.

(4) The person may give a notice of objection to the Secretary of State.

(5) A notice of objection must—

- (a) be in writing,
- (b) give the objector’s reasons, and
- (c) be given before the end of such period as may be prescribed.

(6) Where the Secretary of State receives a notice of objection to a penalty in accordance with this section he shall consider it and—

- (a) cancel the penalty,
- (b) reduce the penalty,
- (c) increase the penalty, or
- (d) determine to take no action under paragraphs (a) to (c).

(7) Where the Secretary of State considers a notice of objection under subsection (6) he shall—

- (a) inform the objector of his decision before the end of such period as may be prescribed or such longer period as he may agree with the objector,
- (b) if he increases the penalty, issue a new penalty notice under subsection (1), and
- (c) if he reduces the penalty, notify the objector of the reduced amount.”

(4) In subsection (9)—

- (a) for the first “served” substitute “ issued ”, and
- (b) for “served on” substitute “ issued to ”.

(5) At the end add—

“(11) In proceedings for enforcement of a penalty under subsection (10) no question may be raised as to—

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- (a) liability to the imposition of the penalty, or
  - (b) its amount.
- (12) A document which is to be issued to or served on a person outside the United Kingdom for the purpose of subsection (1) or (7) or in the course of proceedings under subsection (10) may be issued or served—
- (a) in person,
  - (b) by post,
  - (c) by facsimile transmission, or
  - (d) in another prescribed manner.
- (13) The Secretary of State may by regulations provide that a document issued or served in a manner listed in subsection (12) in accordance with the regulations is to be taken to have been received at a time specified by or determined in accordance with the regulations.”

#### Commencement Information

**I15** Sch. 8 para. 7 partly in force; Sch. 8 para. 7 not in force at Royal Assent see s. 162(2); Sch. 8 para. 7 in force at 14.11.2002 and 8.12.2002 for certain purposes by [S.I. 2002/2811](#), [art. 2](#), [Sch.](#)

8 After section 35 insert—

#### “35A Appeal

- (1) A person may appeal to the court against a penalty imposed on him under section 32 on the ground that—
  - (a) he is not liable to the imposition of a penalty, or
  - (b) the amount of the penalty is too high.
- (2) On an appeal under this section the court may—
  - (a) allow the appeal and cancel the penalty,
  - (b) allow the appeal and reduce the penalty, or
  - (c) dismiss the appeal.
- (3) An appeal under this section shall be a re-hearing of the Secretary of State’s decision to impose a penalty and shall be determined having regard to—
  - (a) any code of practice under section 32A which has effect at the time of the appeal,
  - (b) the code of practice under section 33 which had effect at the time of the events to which the penalty relates, and
  - (c) any other matters which the court thinks relevant (which may include matters of which the Secretary of State was unaware).
- (4) Subsection (3) has effect despite any provision of Civil Procedure Rules.
- (5) An appeal may be brought by a person under this section against a penalty whether or not—
  - (a) he has given notice of objection under section 35(4);
  - (b) the penalty has been increased or reduced under section 35(6).”

*Status: Point in time view as at 03/03/2010.*

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#### Commencement Information

**I16** Sch. 8 para. 8 partly in force; Sch. 8 para. 8 not in force at Royal Assent see s. 162(2); Sch. 8 para. 8 in force at 8.12.2002 for certain purposes by [S.I. 2002/2811](#), [art. 2](#), [Sch.](#)

- 9 (1) Section 36 (detention of vehicle) shall be amended as follows.
- (2) In subsection (1)—
- (a) for “given” substitute “ issued ”,
  - (b) after paragraph (b) omit “or”, and
  - (c) after paragraph (c) insert “or
  - (d) rail freight wagon.”.
- (3) After subsection (2) insert—
- “(2A) A vehicle may be detained under subsection (1) only if—
- (a) the driver of the vehicle is an employee of its owner or hirer,
  - (b) the driver of the vehicle is its owner or hirer, or
  - (c) a penalty notice is issued to the owner or hirer of the vehicle.
- (2B) A senior officer may detain a relevant vehicle, small ship, small aircraft or rail freight wagon pending—
- (a) a decision whether to issue a penalty notice,
  - (b) the issue of a penalty notice, or
  - (c) a decision whether to detain under subsection (1).
- (2C) That power may not be exercised in any case—
- (a) for longer than is necessary in the circumstances of the case, or
  - (b) after the expiry of the period of 24 hours beginning with the conclusion of the first search of the vehicle, ship, aircraft or wagon by an immigration officer after it arrived in the United Kingdom.”

#### Commencement Information

**I17** Sch. 8 para. 9 partly in force; Sch. 8 para. 9 not in force at Royal Assent see s. 162(2); Sch. 8 para. 9 in force at 8.12.2002 for certain purposes by [S.I. 2002/2811](#), [art. 2](#), [Sch.](#)

- 10 After section 36 insert—

#### “36A Detention in default of payment

- (1) This section applies where a person to whom a penalty notice has been issued under section 35 fails to pay the penalty before the date specified in accordance with section 35(2)(c).
- (2) The Secretary of State may make arrangements for the detention of any vehicle, small ship, small aircraft or rail freight wagon which the person to whom the penalty notice was issued uses in the course of a business.
- (3) A vehicle, ship, aircraft or wagon may be detained under subsection (2) whether or not the person to whom the penalty notice was issued owns it.

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- (4) But a vehicle may be detained under subsection (2) only if the person to whom the penalty notice was issued—
- (a) is the owner or hirer of the vehicle, or
  - (b) was an employee of the owner or hirer of the vehicle when the penalty notice was issued.
- (5) The power under subsection (2) may not be exercised while an appeal against the penalty under section 35A is pending or could be brought (ignoring the possibility of an appeal out of time with permission).
- (6) The Secretary of State shall arrange for the release of a vehicle, ship, aircraft or wagon detained under this section if the person to whom the penalty notice was issued pays—
- (a) the penalty, and
  - (b) expenses reasonably incurred in connection with the detention.”

#### Commencement Information

**I18** Sch. 8 para. 10 partly in force; Sch. 8 para. 10 not in force at Royal Assent see s. 162(2); Sch. 8 para. 10 in force at 8.12.2002 for certain purposes by [S.I. 2002/2811](#), [art. 2](#), [Sch.](#)

- 11 (1) Section 37 (effect of detention of transporter) shall be amended as follows.
- (2) In subsection (1) for “section 36” substitute “ section 36(1) ”.
  - (3) In subsection (2) for “claiming an interest in the transporter,” substitute “ whose interests may be affected by detention of the transporter, ”.
  - (4) In subsection (3)(c) omit “and the applicant has a compelling need to have the transporter released”.
  - (5) After subsection (3) insert—
    - “(3A) The court may also release the transporter on the application of the owner of the transporter under subsection (2) if—
      - (a) a penalty notice was not issued to the owner or an employee of his, and
      - (b) the court considers it right to release the transporter.
    - (3B) In determining whether to release a transporter under subsection (3A) the court shall consider—
      - (a) the extent of any hardship caused by detention,
      - (b) the extent (if any) to which the owner is responsible for the matters in respect of which the penalty notice was issued, and
      - (c) any other matter which appears to the court to be relevant (whether specific to the circumstances of the case or of a general nature).”
  - (6) After subsection (5) insert—
    - “(5A) The power of sale under subsection (4) may be exercised only when no appeal against the imposition of the penalty is pending or can be brought (ignoring the possibility of an appeal out of time with permission).

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(5B) The power of sale under subsection (4) shall lapse if not exercised within a prescribed period.”

(7) After subsection (6) add—

“(7) This section applies to a transporter detained under section 36A as it applies to a transporter detained under section 36(1); but for that purpose—

- (a) the court may release the transporter only if the court considers that the detention was unlawful or under subsection (3A) (and subsection (3) shall not apply), and
- (b) the reference in subsection (4) to the period of 84 days shall be taken as a reference to a period prescribed for the purpose of this paragraph.”

**Commencement Information**

**I19** Sch. 8 para. 11 partly in force; Sch. 8 para. 11 not in force at Royal Assent see s. 162(2); Sch. 8 para. 11 in force at 14.11.2002 and 8.12.2002 for certain purposes by [S.I. 2002/2811](#), [art. 2](#), [Sch.](#)

12 Section 39(rail freight) shall cease to have effect.

**Commencement Information**

**I20** Sch. 8 para. 12 partly in force; Sch. 8 para. 12 not in force at Royal Assent see s. 162(2); Sch. 8 para. 12 in force at 8.12.2002 for certain purposes by [S.I. 2002/2811](#), [art. 2](#), [Sch.](#)

13 For section 40 (charge in respect of passenger without proper documents) substitute—

**“40 Charge in respect of passenger without proper documents**

- (1) This section applies if an individual requiring leave to enter the United Kingdom arrives in the United Kingdom by ship or aircraft and, on being required to do so by an immigration officer, fails to produce—
  - (a) an immigration document which is in force and which satisfactorily establishes his identity and his nationality or citizenship, and
  - (b) if the individual requires a visa, a visa of the required kind.
- (2) The Secretary of State may charge the owner of the ship or aircraft, in respect of the individual, the sum of £2,000.
- (3) The charge shall be payable to the Secretary of State on demand.
- (4) No charge shall be payable in respect of any individual who is shown by the owner to have produced the required document or documents to the owner or his employee or agent when embarking on the ship or aircraft for the voyage or flight to the United Kingdom.
- (5) For the purpose of subsection (4) an owner shall be entitled to regard a document as—
  - (a) being what it purports to be unless its falsity is reasonably apparent, and

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- (b) relating to the individual producing it unless it is reasonably apparent that it does not relate to him.
- (6) For the purposes of this section an individual requires a visa if—
  - (a) under the immigration rules he requires a visa for entry into the United Kingdom, or
  - (b) as a result of section 41 he requires a visa for passing through the United Kingdom.
- (7) The Secretary of State may by order amend this section for the purpose of applying it in relation to an individual who—
  - (a) requires leave to enter the United Kingdom, and
  - (b) arrives in the United Kingdom by train.
- (8) An order under subsection (7) may provide for the application of this section—
  - (a) except in cases of a specified kind;
  - (b) subject to a specified defence.
- (9) In this section “immigration document” means—
  - (a) a passport, and
  - (b) a document which relates to a national of a country other than the United Kingdom and which is designed to serve the same purpose as a passport.
- (10) The Secretary of State may by order substitute a sum for the sum in subsection (2).

#### **40A Notification and objection**

- (1) If the Secretary of State decides to charge a person under section 40, the Secretary of State must notify the person of his decision.
- (2) A notice under subsection (1) (a “charge notice”) must—
  - (a) state the Secretary of State’s reasons for deciding to charge the person,
  - (b) state the amount of the charge,
  - (c) specify the date before which, and the manner in which, the charge must be paid,
  - (d) include an explanation of the steps that the person may take if he objects to the charge, and
  - (e) include an explanation of the steps that the Secretary of State may take under this Part to recover any unpaid charge.
- (3) Where a person on whom a charge notice is served objects to the imposition of the charge on him, he may give a notice of objection to the Secretary of State.
- (4) A notice of objection must—
  - (a) be in writing,
  - (b) give the objector’s reasons, and
  - (c) be given before the end of such period as may be prescribed.

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- (5) Where the Secretary of State receives a notice of objection to a charge in accordance with this section, he shall—
  - (a) consider it, and
  - (b) determine whether or not to cancel the charge.
- (6) Where the Secretary of State considers a notice of objection, he shall inform the objector of his decision before the end of—
  - (a) such period as may be prescribed, or
  - (b) such longer period as he may agree with the objector.
- (7) Any sum payable to the Secretary of State as a charge under section 40 may be recovered by the Secretary of State as a debt due to him.
- (8) In proceedings for enforcement of a charge under subsection (7) no question may be raised as to the validity of the charge.
- (9) Subsections (12) and (13) of section 35 shall have effect for the purpose of this section as they have effect for the purpose of section 35(1), (7) and (10).

#### **40B Appeal**

- (1) A person may appeal to the court against a decision to charge him under section 40.
- (2) On an appeal under this section the court may—
  - (a) allow the appeal and cancel the charge, or
  - (b) dismiss the appeal.
- (3) An appeal under this section—
  - (a) shall be a re-hearing of the Secretary of State’s decision to impose a charge, and
  - (b) may be determined having regard to matters of which the Secretary of State was unaware.
- (4) Subsection (3)(a) has effect despite any provision of Civil Procedure Rules.
- (5) An appeal may be brought by a person under this section against a decision to charge him whether or not he has given notice of objection under section 40A(3).”

#### **Commencement Information**

**I21** Sch. 8 para. 13 wholly in force at 8.12.2002; Sch. 8 para. 13 not in force at Royal Assent see s. 162(2); Sch. 8 para. 13 in force at 14.11.2002 for certain purposes and wholly in force at 8.12.2002 by [S.I. 2002/2811, art. 2, Sch.](#)

- 14 Section 42(power to detain vehicle, &c. carrying person without proper travel documents) shall cease to have effect.
- 15 In section 43 (interpretation) (which becomes subsection (1))—
  - (a) in the definition of “concealed” for “or aircraft” substitute “ , aircraft or rail freight wagon ”,
  - (b) omit the definition of “court”,

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- (c) after the definition of “equipment” insert—
- “freight shuttle wagon” means a wagon which—
- (a) forms part of a shuttle-train, and
- (b) is designed to carry commercial goods vehicles;
- “freight train” means any train other than—
- (a) a train engaged on a service for the carriage of passengers, or
- (b) a shuttle-train;”,
- (d) in the definition of “owner” omit paragraph (b) and the word “and” immediately preceding it,
- (e) for the definition of “rail freight wagon” substitute—
- “rail freight wagon” means—
- (a) any rolling stock, other than a locomotive, which forms part of a freight train, or
- (b) a freight shuttle wagon,
- and for the purpose of this definition, “rolling stock” and “locomotive” have the meanings given by section 83 of the Railways Act 1993 (c.43);”,
- (f) after the definition of “ship” insert—
- “shuttle-train” has the meaning given by section 1(9) of the Channel Tunnel Act 1987 (c. 53);”,
- (g) in the definition of “transporter” for “or aircraft” substitute “, aircraft or rail freight wagon”, and
- (h) at the end insert—
- “(2) A reference in this Part to “the court” is a reference—
- (a) in England and Wales, to a county court,
- (b) in Scotland, to the sheriff, and
- (c) in Northern Ireland, to a county court.
- (3) But—
- (a) a county court may transfer proceedings under this Part to the High Court, and
- (b) the sheriff may transfer proceedings under this Part to the Court of Session.”
- 16 (1) Schedule 1 (sale of transporter) shall be amended as follows.
- (2) In paragraph 1(2)(a) omit “or charge”.
- (3) After paragraph 2 insert—
- “2A Where the owner of a transporter is a party to an application for leave to sell it, in determining whether to give leave the court shall consider—
- (a) the extent of any hardship likely to be caused by sale,
- (b) the extent (if any) to which the owner is responsible for the matters in respect of which the penalty notice was issued, and
- (c) any other matter which appears to the court to be relevant (whether specific to the circumstances of the case or of a general nature).”



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- (4) In paragraph 5(1) omit “or 42”.
- (5) In paragraph 5(2)(d) omit “or charge”.

#### Commencement Information

**I22** Sch. 8 para. 16 partly in force; Sch. 8 para. 16 not in force at Royal Assent see s. 162(2); Sch. 8 para. 16 in force at 8.12.2002 for certain purposes by [S.I. 2002/2811](#), [art. 2](#), [Sch.](#)

- 17 (1) This paragraph applies to a code of practice which—
- (a) has effect, before the coming into force of paragraph 12 of this Schedule, by virtue of sections 33 and 39 of the Immigration and Asylum Act 1999 (c. 33) (power to apply provisions about carriers’ liability to rail freight), and
  - (b) could be issued under section 33 of that Act after the coming into force of paragraph 2 of this Schedule.
- (2) A code of practice to which this paragraph applies—
- (a) shall continue to have effect after the coming into force of paragraph 12 of this Schedule, and
  - (b) shall be treated after that time as if made and brought into operation under section 33 alone.

#### Commencement Information

**I23** Sch. 8 para. 17 partly in force; Sch. 8 para. 17 not in force at Royal Assent see s. 162(2); Sch. 8 para. 17 in force at 8.12.2002 for certain purposes by [S.I. 2002/2811](#), [art. 2](#), [Sch.](#)

## SCHEDULE 9

Section 161

### REPEALS

#### Commencement Information

**I24** Sch. 9 partly in force; Sch. 9 in force in relation to specified entry at Royal Assent see s. 162(2); Sch. 9 in force in relation to further specified entries: at 8.12.2002 by [S.I. 2002/2811](#), [art. 2](#), [Sch.](#); 10.2.2003 by [S.I. 2003/1](#), [art. 2](#), [Sch.](#); 1.4.2003 by [S.I. 2003/754](#), [art. 2](#), [Sch. 1](#)

#### *Short title and chapter*

Immigration Act 1971 (c. 77)

#### *Extent of repeal*

In section 3(9)(b), the words “issued by or on behalf of the Government of the United Kingdom certifying that he has such a right of abode”.

Section 7(1)(a).

Section 24A(4).

Section 25A(7).

In section 26(3) the word “or” after paragraph (c).

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	In section 28(1) the words “, 24A, 25”.
	In section 28A—
	subsection (4),
	in subsection (10), “, (4)(b)”, and
	in subsection (11), “, (4)”.
	Section 29.
	Section 31(d).
Race Relations Act 1976 (c. 74)	Section 19E(7).
	In section 71A(1), the words “(within the meaning of section 19D(1))”.
British Nationality Act 1981 (c. 61)	In section 3(6), paragraph (c) and the word “and” immediately preceding it.
	Sections 7 to 9.
	In section 10—
	in subsection (1), the words “, if a woman,”
	and
	in subsection (2), the words “if a woman,”.
	In section 17(6), paragraph (c) and the word “and” immediately preceding it.
	Sections 19 to 21.
	In section 22—
	in subsection (1), the words “, if a woman,”
	and
	in subsection (2), the words “if a woman,”.
	Section 27(2).
	Section 28.
	Section 33.
	Section 44(2) and (3).
	Section 47.
	In Schedule 1—
	in paragraph 4(c), the words “and (e)”, and
	in paragraph 8(c), the words “and (e)”.
	In Schedule 2—
	in paragraphs 1(1)(b) and 2(1)(b), the words “he is born legitimate and”, and
	in paragraph 3(1)(b), the words “had attained the age of ten but”.
	In Schedule 4—
	in paragraph 2, in the second column of the Table, the entry relating to section 29(1) of the Immigration Act 1971, and
	paragraph 6.
British Nationality (Falkland Islands) Act 1983 (c. 6)	Section 4(3)(b).
British Nationality (Hong Kong) Act 1990 (c. 34)	Section 1(5).
Asylum and Immigration Act 1996 (c. 49)	Section 5.
Special Immigration Appeals Commission Act 1997 (c. 68)	Section 2A.
	Section 4.

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	<p>In section 5(1)(a) and (b) and (2), the words “or 2A”.</p> <p>Section 7A.</p> <p>Schedule 2.</p>
Immigration and Asylum Act 1999 (c. 33)	<p>In section 10(1)(c), the words “(“the first directions”)” and “(“the other person”)”.</p> <p>Section 15.</p> <p>Section 29.</p> <p>In section 33(2)(b), the words “both Houses of”.</p> <p>In section 34—</p> <p>in subsection (3)(c), the first “that”, and subsection (5).</p> <p>In section 36(1), the word “or” immediately preceding paragraph (c).</p> <p>In section 37(3)(c), the words “and the applicant has a compelling need to have the transporter released”.</p> <p>Section 38(1) and (3).</p> <p>Section 39.</p> <p>Section 42.</p> <p>In section 43, in the definition of “owner” paragraph (b) and the word “and” immediately preceding it.</p> <p>Sections 44 to 52.</p> <p>Section 53(5).</p> <p>Section 55.</p> <p>Sections 56 to 81.</p> <p>Section 94(5) and (6).</p> <p>Section 96(4) to (6).</p> <p>In section 147, the definition of “detention centre”.</p> <p>Section 166(4)(e).</p> <p>In Schedule 1—</p> <p>in paragraph 1(2)(a), the words “or charge”, in paragraph 5(1), the words “or 42”, and in paragraph 5(2)(d), the words “or charge”.</p> <p>In paragraph 9 of Schedule 4, the words “(4), (5)” in sub-paragraph (1)(a), and sub-paragraphs (4) and (5).</p> <p>Schedules 2 to 4.</p> <p>In Schedule 8, paragraphs 2 and 6.</p> <p>In Schedule 14, paragraphs 46(a), 51, 53, 66, 96, 98(2) and (3), 120 to 121 and 126 to 129.</p>
Race Relations (Amendment) Act 2000 (c. 34)	<p>In Schedule 2, paragraphs 23 to 29 and 32 to 40.</p>

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**Status:**

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**Changes to legislation:**

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