These notes refer to the Immigration Act 2014 (c.22) which received Royal Assent on 14 May 2014

IMMIGRATION ACT 2014

EXPLANATORY NOTES

BACKGROUND

Part 1: Removal and other powers

12. To enforce the removal of a migrant from the UK it is necessary to identify them, to make a removal decision, to provide a travel document recognised by the State to which they will be removed and to detain them ahead of transfer to a port of departure. The Act amends the legislation behind this removal process.

13. Currently, a removal decision can be made under several different powers in the Immigration Acts: paragraphs 8 to 10 of Schedule 2 to the Immigration Act 1971 ("the 1971 Act"); section 10 of the Immigration and Asylum Act 1999 ("the 1999 Act") and section 47 of the Immigration, Asylum and Nationality Act 2006 ("the 2006 Act"). The relevant power depends on whether the person being removed has been refused leave at the border, is an illegal entrant, an overstayer, has obtained leave to enter or remain by deception or has no further leave to remain following the refusal of an application to extend their leave. The Act replaces these separate powers with a single power to remove a person who requires leave to enter or remain in the UK but does not have it. This could be because they never had such leave (they entered illegally), they did have such leave but stayed on after it expired or was revoked, or they could be a national of an EEA state who is subject to a deportation or exclusion order.

14. The Government announced its policy on ending the detention of children for immigration purposes in a Written Ministerial Statement by the former Immigration Minister Damian Green MP on 16 December 2010.[1] The Act will prevent a child and their parent or carer living with them from being removed or required to leave the UK for a period of 28 days after the family has exhausted any right of appeal. It establishes an Independent Family Returns Panel and places a requirement on the Secretary of State to consult the Panel in each family returns case on how best to safeguard and promote the welfare of children in the family.

15. A person in immigration detention may apply to the First-tier Tribunal ("the Tribunal") for bail. The Act limits the ability of individuals awaiting removal from the UK to be released on bail, and also makes provision preventing repeat bail applications.

16. The Act amends Part 8 of the 1999 Act to add a new category of "pre-departure accommodation for families." It also limits the detention of an unaccompanied child under Schedule 2 to the 1971 Act in a short-term holding facility to a maximum period of 24 hours, either where directions are in force requiring the child's removal or a decision whether or not to give directions is considered likely to result in such directions.

17. Unique biometric identifiers, such as fingerprints and facial photographs, allow a person's identity to be matched to immigration or other records. There are already powers to take biometrics, such as section 126 of the Nationality, Immigration and

1 House of Commons, Official Report, 16 December 2010, Vol. 520, Part No 92, col. 125WS

Asylum Act 2002 ("the 2002 Act") which provides for biometrics for visa applicants, and sections 5 to 15 of the UK Borders Act 2007 ("the 2007 Act") which provide for the issue of biometric immigration documents, more commonly known as Biometric Residence Permits. There are classes of persons from whom it is not currently possible to require biometrics and the Act seeks to close these gaps: in particular it provides for biometrics to be taken from non-EEA family members of EEA nationals, transit visa applicants and persons applying for British citizenship. The Act also provides the power for an immigration officer to require a person to provide biometric information, usually fingerprints, for the purpose of verifying their identity and thus their immigration status, in cases where there are reasonable grounds to suspect that that person might be liable to removal from the UK.

18. Where a biometric match to immigration records is established it may be possible to link a migrant to a record of a travel document. It may also be necessary to locate the original travel document to facilitate removal. Paragraph 25A of Schedule 2 to the 1971 Act provides immigration officers with a power to enter premises to search for relevant documents. Schedule 1 amends this provision so that it applies also to all persons who are in immigration detention following their arrest for a criminal offence, whether or not it was the police who made that arrest, and extends this search power - with a warrant - to premises belonging to a third party. Schedule 1 also amends powers to search and escort detained persons.

Part 2: Appeals etc

19. Currently a right of appeal to the Tribunal exists against any of the 14 different immigration decisions listed in section 82 of the 2002 Act. These include refusals of entry, refusals to vary leave to enter and remain and decisions to remove and deport. There are two further rights of appeal in section 83 and 83A of the 2002 Act against decisions to reject an asylum claim or revoke refugee status in certain circumstances. The Act restructures rights of appeal to the Tribunal, providing an appeal against refusal of a human rights claim, a protection claim (humanitarian protection and asylum) and revocation of refugee or humanitarian protection status. It will also continue to be possible to bring an appeal, as is currently the case, against a decision to refuse an application based on a right under Community Treaties – provided for by regulations[2] under section 109 of the 2002 Act.

20. Currently a person may not bring an appeal while in the UK when the Secretary of State has certified an asylum or human rights claim as clearly unfounded under section 94 of the 2002 Act. A power also exists in section 97A of the 2002 Act to prevent a person bringing an appeal while in the UK when the Secretary of State certifies that removal would be in the interests of national security. This latter power also allows the Secretary of State to certify in national security cases that the temporary removal of the appellant pending the outcome of an appeal would not breach the UK's human rights obligations (this provision was added by section 54 of the Crime and Courts Act 2013). The Act makes provision equivalent to the section 97A power to enable certification of a human rights claim where it is considered that the temporary removal of persons liable to deportation pending the outcome of an appeal would not breach the UK's human rights obligations, including where removal would not create a real risk of serious irreversible harm.

21. In July 2011 the Home Office published a consultation paper on *Family Migration*.[3] On 11 June 2012 the Government published its response to the consultation setting out that Immigration Rules would be made to reflect the Government's and Parliament's view of how the balance should be struck between the right to respect for private and family life under Article 8 of the ECHR and the public interest, including safeguarding the economic well-being of the UK, enforcing immigration controls and protecting

2 SI 2006/1003 (as amended)
3 https://www.gov.uk/government/consultations/family-migration-consultation

the public from foreign criminals.[4] New Immigration Rules came into force on 9 July 2012.[5] The Act gives the force of primary legislation to the principles reflected in those rules by requiring a court or tribunal, when determining whether a decision is in breach of Article 8 ECHR, to have regard to the public interest considerations as set out in the Act.

Part 3: Access to Services etc

22. Existing restrictions prevent migrants who do not have the right to enter or remain in the UK from accessing social housing. On 25 March 2013 the Prime Minister committed to creating a new general duty on private landlords to check a tenant's immigration status.[6] In July 2013 the Government conducted a public consultation titled *Tackling illegal immigration in privately rented accommodation*.[7] The Act enables civil penalties to be imposed on those private landlords who rent out premises to illegal migrants without making appropriate checks. This approach is similar to existing obligations on employers to check immigration status in the 2006 Act.

23. Where a landlord can demonstrate that they undertook specified checks regarding the migrant's status before first granting them rights of occupation they will have a statutory excuse to avoid liability for the civil penalty. There will be a code of practice to ensure checks are not carried out on a discriminatory basis, as well as an appeals process against the imposition of a civil penalty. The measures are intended to make it more difficult for illegal migrants to rent property and thus encourage illegal migrants to regularise their stay or leave the UK.

24. Other than visitors, most temporary migrants with time-limited immigration status are currently able to access the NHS for free during their stay in the UK. The Home Office consultation *Controlling Immigration – Regulating Migrant Access to Health Services in the UK*[8] set out proposals to amend this position. The Act provides for an immigration health charge which will be payable by certain categories of temporary migrant. Migrants would pay the charge at the same time as they applied for entry clearance for a limited period of leave, or limited leave to enter or remain in the UK, including an application to vary leave. The purpose of this provision is to ensure that migrants pay towards the cost of health services available in the UK commensurate with their limited immigration status.

25. The Home Office already works in partnership with the financial services industry to help prevent fraud. CIFAS[9] holds Home Office data on thousands of known immigration offenders. The Act contains provision intended to ensure that those known to be unlawfully in the UK can be prevented from opening a current account.

26. The 2006 Act sets out a prohibition on the employment of adults who are subject to immigration control and do not have leave to enter or remain in the UK, or who are subject to a condition preventing the acceptance of the employment. The prohibition is supported through both a civil penalty regime and a criminal sanction. Enforcing civil penalties is a complex process and the Home Office consultation paper, *Strengthening and simplifying the civil penalty scheme to prevent illegal working*,[10] published on 9 July 2013, set out proposals for how this could be streamlined. The Act amends existing legislation to require an employer to exercise their right to object to a civil penalty before they can appeal to the civil court. It also simplifies and accelerates the enforcement of civil penalty debts in the civil courts.

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4 http://www.ukba.homeoffice.gov.uk/sitecontent/documents/news/cons-fam-mig.pdf
5 Statement of Changes in Immigration Rules, HC194, published 13 June 2012
6 https://www.gov.uk/government/speeches/david-camerons-immigration-speech
7 https://www.gov.uk/government/consultations/tackling-illegal-immigration-in-privately-rented-accommodation
8 https://www.gov.uk/government/consultations/migrant-access-to-health-services-in-the-uk
9 Formerly known as the Credit Industry Fraud Avoidance System: www.cifas.org.uk
10 https://www.gov.uk/government/consultations/prevention-of-illegal-working-simplifying-the-civil-penalty-scheme

27. The Prime Minister's speech of 25 March 2013 also included a commitment to ensure that illegal immigrants do not hold UK driving licences. Historically, it has been easy for illegal immigrants to secure driving licences and enjoy the privileges of being able to drive and the advantages this brings in securing a settled lifestyle. The published policy in relation to the granting of licences was amended in March 2010 so as to require all applicants to demonstrate that they are in the UK lawfully[11] and 3,000 applications per annum have been refused as a consequence. The sections in the Act on driving licences reflect and support this policy. They also provide powers to revoke a licence held by an illegal immigrant; this will be exercised primarily in respect of those who obtained a licence before immigration checks were introduced, and also those individuals who arrived in the UK lawfully but have subsequently remained unlawfully.

Part 4: Marriage and Civil Partnership

28. Sham marriages (or marriages of convenience) and sham civil partnerships – where the marriage or civil partnership is contracted for immigration advantage by a couple who are not in a genuine relationship – pose a significant threat to UK immigration control. The Home Office estimates that roughly 4,000 to 10,000 applications a year to stay in the UK, under the Immigration Rules or the Immigration (EEA) Regulations 2006[12], are made on the basis of a sham marriage or civil partnership. Since 1999, changes to primary legislation and to the Immigration Rules have been introduced in an attempt to prevent abuse by those prepared to enter into a sham marriage or civil partnership as a means to stay in the UK. However, the Government considers that further legislative changes are required to tackle this problem.

29. In 2011 the Government consulted on proposed reforms to family migration including measures to tackle sham marriages.[13] The Act extends and amends the marriage and civil partnership notice process to better enable the Home Office to identify and investigate suspected sham marriages and civil partnerships as a basis for taking enforcement and other immigration action under existing powers in cases established as sham.

30. The Act will change the procedures for giving notice of marriage and civil partnership in England and Wales, in order to provide for a new referral and investigation scheme for proposed marriages and civil partnerships involving a non-EEA national subject to immigration control. It provides an enabling power to allow the scheme to be extended to Scotland and Northern Ireland by order. It also extends the powers for information to be shared by and with registration officials for the purpose of tackling sham marriages and civil partnerships and related abuse. The Government has published additional background information on this measure.[14]

Part 5: Oversight

31. The OISC was established in May 2000 under the 1999 Act to regulate providers of immigration advice. The Commissioner is responsible for ensuring that those who give immigration advice are fit and competent, act in the best interests of their clients, comply with a statutory Code of Conduct and, where relevant, rules made under the 1999 Act. Generally advisers must register with the Commissioner or face prosecution (unless they are covered by an exemption under the 1999 Act). The Act imposes a duty on the OISC to immediately cancel the registration of unfit or defunct organisations. It provides a power for the OISC to apply to the Tribunal to suspend the activities of an adviser charged with criminal offences until the matter has been resolved. It provides the OISC with a revised power of entry (which requires a warrant) that will apply in respect of the exercise of their audit and inspection duties and to

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11 House of Commons, Official Report, 25 March 2010, Vol. 508, Part No 64, col. 70WS
12 SI 2006/1003 (as amended)
13 Family Migration consultation, *op.cit*
14 *Sham Marriage and Civil Partnerships: Background information*, published November 2013, https://www.gov.uk/government/publications/immigration-bill-part-4-marriage-and-civil-partnership

entry to businesses operating from private premises. Finally, it amends the 1999 Act to create a single category of regulated adviser by removing one of the main exemptions which permitted certain advisers to operate without registering with OISC (with the Commissioner's consent). This will simplify the regulatory scheme and changes are being made to the arrangements for fees for registration to enable them to be waived in cases where organisations did not previously have to apply for registration.

32. The Act will also bring greater oversight of Home Office immigration enforcement. Since February 2008 the Independent Police Complaints Commission has provided oversight of investigations into serious complaints, conduct matters and incidents involving immigration officers and officials of the Secretary of State exercising immigration and asylum enforcement powers in England and Wales. This remit was extended to officials exercising general customs and customs revenue functions in 2009. In Scotland, the Crown Office and Procurator Fiscal Service and the Police Investigations & Review Commissioner have the power to provide equivalent independent oversight. However, there is no independent oversight of enforcement activity involving immigration officers and designated customs officials in Northern Ireland. The Act remedies this, placing the exercise of enforcement powers by such Home Office officials under the oversight of the Police Ombudsman for Northern Ireland ("PONI").

Part 6: Miscellaneous

33. Section 50(9A) of the British Nationality Act 1981 ("the 1981 Act") amended the definition of father to remove discrimination in that Act against illegitimate children born to British fathers. However this definition applied only to children born on or after 1 July 2006. This Act amends the 1981 Act to provide an entitlement to registration for persons born before 1 July 2006 to a British father who was not married to their mother at the time of their birth.

34. Currently any person may lose their citizenship if the Secretary of State is satisfied that doing so is conducive to the public good, provided that depriving them of their citizenship would not render them stateless. Following the Supreme Court judgment in Al Jedda[15], the Act will amend this power by allowing naturalised persons to be deprived of their citizenship where they conduct themselves in a manner seriously prejudicial to the vital interests of the UK, even where to do so may render them stateless, provided that the Secretary of State has reasonable grounds for believing they are able to become a national of another country or territory.

35. In May 2010 the Government published The Coalition: our programme for government[16] which included a commitment to reintroduce exit checks. Routine embarkation controls at UK ports were fully phased out by 1998. The powers to conduct embarkation controls exist in the 1971 Act. Exit checks are already being operated using the electronic capture of data of departing passengers and through targeted, intelligence-led embarkation controls. In delivering the exit checks commitment, the Government's approach is to seek to minimise the impact on port operations and on the flow of legitimate passengers through airports, seaports and international rail terminals by integrating embarkation checks with existing processes, wherever possible. The Government will continue to discuss with carriers and port operators proposals to enable those who currently have a role in outbound passenger processes, such as carrier and port operator staff, to deliver exit checks. The Act allows the Secretary of State to enable third parties, including carriers and port operator staff, (as 'designated persons'), to undertake embarkation checks. It also contains powers to enable the Secretary of State to direct carriers and port operators to make arrangements for a designated person to conduct embarkation checks.

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15 *Al Jedda v SSHD* [2013] UKSC 62
16 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf

36. The Secretary of State's powers to charge fees in connection with immigration and nationality are currently set out in sections 51 and 52 of the 2006 Act, and section 42 of the Asylum and Immigration (Treatment of Claimants, etc.) Act ("the 2004 Act"), which is amended by section 20 of the 2007 Act. The Act consolidates these powers, to simplify the charging framework, and amends certain elements to ensure that it is more responsive to the needs of the Government and people who use immigration and nationality services.