

## NATIONALITY AND BORDERS BILL

### AMENDMENT TO BE MOVED IN COMMITTEE

Clause 1, page 2, line 46

add at end –

“(7) The Secretary of State must not charge a fee for the processing of applications under this section.”

#### Effect

This amendment ensures that the Secretary of State must not charge a fee for the processing of applications under clause 1.

#### Reason

We agree with clause 1 subject however to the registration process being free. In this connection we acknowledge and agree with the report by British Futures: Barriers to Britishness 2020 which recommended (pages 10/11): “Citizenship by registration should be free for those who become British by this route. This group mostly comprises children and those with subsidiary categories of British nationality, such as British Overseas Territories Citizens and British National (Overseas) passport holders from Hong Kong who now have a route to citizenship through the bespoke British National (Overseas) visa. Nationality law should be amended to allow children born in the UK to British citizens automatically, restoring a policy that applied before 1983. Vulnerable groups of people should be encouraged to take legal advice, which should be affordable and widely available in all parts of the UK”: <https://www.britishfuture.org/publication/barriers-to-britishness-report-of-the-alberto-costa-inquiry-into-citizenship-policy/> We note the case of *PRBC & O v Secretary of State for the Home Department [2021] EWCA Civ 193* where the Court of Appeal held that the fee of £1012 for certain applications by children to register is unlawfully high. This appeal in this case has recently been heard in the United Kingdom Supreme Court and we await the decision in due course.

## NATIONALITY AND BORDERS BILL

### AMENDMENT TO BE MOVED IN COMMITTEE

Clause 2, page 3, line 19

add at end -

“(e) The Secretary of State must not charge a fee for the processing of applications under this section.”

#### Effect

This consequential amendment ensures that the Secretary of State must not charge a fee for the processing of applications under clause 2.

#### Reason

See the reason for the preceding amendment.

## NATIONALITY AND BORDERS BILL

### AMENDMENT TO BE MOVED IN COMMITTEE

Clause 2, page 4, line 3

add at end -

“(6) The Secretary of State must not charge a fee for the processing of applications under this section.”

#### Effect

This consequential amendment ensures that the Secretary of State must not charge a fee for the processing of applications under clause 2.

#### Reason

See the reason for the amendment to clause 1.

**NATIONALITY AND BORDERS BILL**

**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 2, page 5, line 16

add at end –

“(3) The Secretary of State must not charge a fee for the processing of applications under this section.”

Effect

This amendment ensures that the Secretary of State must not charge a fee for the processing of applications under clause 2.

Reason

See the reason for the amendment to clause 1.

## NATIONALITY AND BORDERS BILL

### AMENDMENT TO BE MOVED IN COMMITTEE

Clause 2, page 6, line 40

add at end -

“(8) The Secretary of State must not charge a fee for the processing of applications under this section.”

#### Effect

This consequential amendment ensures that the Secretary of State must not charge a fee for the processing of applications under clause 2.

#### Reason

See the reason for the amendment to clause 1.

**NATIONALITY AND BORDERS BILL**

**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 3, page 8, line 18

add at end -

“(4) The Secretary of State must not charge a fee for the processing of applications under this section.”

Effect

This consequential amendment ensures that the Secretary of State must not charge a fee for the processing of applications under clause 3.

Reason

See the reason for the amendment to clause 1.

## NATIONALITY AND BORDERS BILL

### AMENDMENT TO BE MOVED IN COMMITTEE

Clause 7, page 10, line 25

add at end -

“(5) The Secretary of State must not charge a fee for the processing of applications under this section.”

#### Effect

This consequential amendment ensures that the Secretary of State must not charge a fee for the processing of applications under clause 7.

#### Reason

See the reason for the amendment to clause 1.

## NATIONALITY AND BORDERS BILL

### AMENDMENT TO BE MOVED IN COMMITTEE

Clause 7, page 11, line 8

add at end -

“(5) The Secretary of State must not charge a fee for the processing of applications under this section.”

#### Effect

This consequential amendment ensures that the Secretary of State must not charge a fee for the processing of applications under clause 7.

#### Reason

See the reason for the amendment to clause 1.



## NATIONALITY AND BORDERS BILL

### AMENDMENT TO BE MOVED IN COMMITTEE

Clause 9, page 11, line 33

leave out subsections 40(5A) (a) and (b)

#### Effect

This amendment deletes new subsection 40(5A) (a) and (b).

#### Reason

The Explanatory Notes (paragraph 140) state: This clause amends section 40 of the British Nationality Act 1981 (“the 1981 Act”) to allow a decision to deprive a person of British citizenship to be made in the absence of contact with the person and to ensure that the associated deprivation order is valid. This objective is achieved by Clause 9 of the bill which inserts into the British Nationality Act 1981 a new subsection 40(5A).

New subsection 40(5A) (a) and (b) states:

*(5A) Subsection (5) does not apply if it appears to the Secretary of State that—*

*(a) the Secretary of State does not have the information needed to be able to give notice under that subsection,*

*(b) it would for any other reason not be reasonably practicable to give notice under that subsection, or*

The aim of this clause is to provide a means of depriving a person of their British citizenship where it is not possible to give, or there are reasons for not giving, prior notice of the deprivation decision, as specified in subsection (2) of the clause. This is necessary to ensure that deprivation powers can be used effectively in all appropriate circumstances including, for example, where a person is no longer contactable by the Home Office (Explanatory Notes, paragraph 141).

The fact that the Home Office has lost contact with a person is not a sufficient reason to remove the obligation to notify that a person is to be deprived of citizenship. This amendment ensures that notification is still required in such circumstances.

However, where a decision has been made to deprive a person of citizenship on the basis that the person poses a threat to national security it will remain permissible to

remove citizenship without notice on the basis that the person can appeal against that decision.

## NATIONALITY AND BORDERS BILL

### AMENDMENT TO BE MOVED IN COMMITTEE

Clause 9, page 11, line 39

leave out subsection 40(5A) (c)(ii)

#### Effect

This amendment deletes new section 40(5A) (c)(ii).

#### Reason

New section 40(5A) (c)(ii) disapplies the requirement to give notice of the decision to deprive where notice should not be given in the interests of the relationship between the UK and another country. "Interests of the relationship between the UK and another country" seems a vague and imprecise reason for not notifying a person of the deprivation of their citizenship.

The Government should provide further justification why this provision is necessary.

## NATIONALITY AND BORDERS BILL

### AMENDMENT TO BE MOVED IN COMMITTEE

Clause 11, page 13, line 33

leave out “a refugee is a Group 1”  
and insert “a person is a”

#### Effect

This amendment ensures equality of treatment by removing the distinction between class 1 and class 2 refugees.

#### Reason

Clause 10 provides for “differential treatment of refugees” depending on their mode of arrival. The Home Secretary already has power to treat refugees differently depending on their mode of arrival, but this power should not be used in a discriminatory way. The distinction made in subsection (1) between types of refugee based on how they arrived in the UK has been criticised by the UNHCR who has stated that this provision threatens “to create a discriminatory two-tier asylum system, undermining the 1951 Refugee Convention and longstanding global cooperation on refugee issues”:

<https://www.unhcr.org/uk/news/press/2021/5/6097bce14/unhcr-deeply-concerned-atdiscriminatory-twotier-uk-asylum-plans-urges.html>

The Government are aware of the Convention as the clause adopts the wording of Article 31 of the Refugee Convention in subsection (2) on “coming directly from a territory where their life or freedom was threatened”. This wording was interpreted broadly and in line with the intentions of the drafters of the Refugee Convention in the case of *R v Uxbridge magistrates’ Court and Another ex parte Adimi* [2001] QB 667, Simon Brown LJ identified the purpose: “To provide immunity for genuine refugees whose quest for asylum reasonably involved”. Professor GoodwinGill in his paper on Article 31 of the 1951 Convention relating to the Status of Refugees: Nonpenalization, Detention and Protection notes “So far as the references in Article 31(1) to refugees who ‘come directly’ and show ‘good cause’ may be ambiguous, the travaux préparatoires illustrate that these terms were not intended to deny protection to persons in analogous situations” (Paragraph12): <https://www.unhcr.org/3bcfdf164.pdf> Clause 34 of the bill which deals with the interpretation of Article 34(1) of the Refugee Convention, seems to adopt a restricted meaning: A refugee is not to be taken to have come to the United Kingdom directly from a country where their life or freedom was threatened if, in coming from that country, they stopped in another country outside the United Kingdom, unless they can show that they could not reasonably be expected to have sought protection under the Refugee Convention in that country. Examples of how the differential treatment may be applied are given in clause 10(5) including length of leave, requirements to meet for settlement, conditions attached to leave and treatment of family members. We take the view that how a person enters the UK should not impact on family reunion. Safe and legal

routes have been reduced since the UK left the European Union with the removal of the Dublin III Regulation. This provision appears to be actually reducing the prospect of families using one of only the two safe and legal routes the Asylum seeker has i.e., refugee family reunion – the other being UNHCR resettlement. Fewer safe and legal routes are likely to result in more unsafe and perilous journeys.

**NATIONALITY AND BORDERS BILL**

**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 11, page 13, line 36

leave out line 36.

Effect

Consequential amendment.

## NATIONALITY AND BORDERS BILL

### AMENDMENT TO BE MOVED IN COMMITTEE

Clause 11, page 14, line 7

leave out “treat Group 1 and Group 2 refugees differently, for example” and insert “exercise reasonable discretion”

#### Effect

This amendment is consequential on the removal of the distinction between Class 1 and Class 2 refugees and ensures that the Secretary of State or an immigration officer must exercise discretion in a reasonable manner.

## NATIONALITY AND BORDERS BILL

### AMENDMENT TO BE MOVED IN COMMITTEE

Clause 11, page 14, line 18

leave out “also treat the family members of Group 1 and Group 2 refugees differently “and insert “exercise reasonable discretion in relation to a family member of a refugee”

#### Effect

This amendment is consequential on the removal of the distinction between Class 1 and Class 2 refugees and ensures that the Secretary of State or an immigration officer must exercise discretion in a reasonable manner.



## NATIONALITY AND BORDERS BILL

### AMENDMENT TO BE MOVED IN COMMITTEE

Clause 31, page 34, line 41

leave out clause 31

#### Effect

This amendment deletes clause 31.

#### Reason

The leading case for the standard of proof test to determine a 'well-founded fear in persecution' for asylum cases is *Ravichandran v SSHD [1996] Imm AR 97*.

In *Karanakaran v. Secretary of State for the Home Department, [2000] EWCA Civ. 11*, the Court of Appeal affirmed that the standard of proof in civil proceedings (the balance of probabilities referred to in clause 31(2)) was not suitable for immigration matters. Instead, what was important was making an assessment of all material considerations such that it 'must not exclude any matters from its consideration when it is assessing the future unless it feels that it can safely discard them because it has no real doubt that they did not in fact occur'.

Sedley LJ described the balance of probabilities as "...part of a pragmatic legal fiction. It has no logical bearing on the assessment of the likelihood of future events or (by parity of reasoning) the quality of past ones".

For the last 20 years, the Karanakaran approach has consistently been followed.

The Outer House of the Court of Session re-affirmed Karanakaran as the correct standard of proof approach to be applied in the 2020 case of *MF (El Salvador) v Secretary of State for the Home Department [2020] CSOH 84*. In that case, it was held the First-Tier Tribunal Judge had erred in law by applying the wrong standard of proof in respect of an application for permission to appeal brought by an asylum seeker.

In *Kaderli v. Chief Public Prosecutor's Office of Gebeze, Turkey [2021] EWHC 1096*, the High Court reaffirmed (while referencing Karanakaran) that the question as to determining a well-founded fear of persecution is that of an evaluative nature about the likelihood of future events. In this case it was held that 'the judge erred in holding that it was for the appellant to prove on the balance of probabilities that the corruption alleged had occurred. The true test involved the application of a lower standard: whether there was a real risk that the appellant's conviction was based on

a trial tainted by corruption. This was consistent with the approach to the fact-finding in the immigration context.' In summary, we take the view that the change in clause 31 appears to go against the intention of the New Plan for Immigration, and flies in the face of 25 years judicial scrutiny.

**NATIONALITY AND BORDERS BILL**

**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 39, page 40, line 7

leave out “arrives in” and insert  
“enters”

Effect

Paving amendment.

## NATIONALITY AND BORDERS BILL

### AMENDMENT TO BE MOVED IN COMMITTEE

Clause 39, page 40, line 14

leave out “arrives in” and insert  
“enters”

#### Effect

This amendment deletes “arrives in” from clause 39 and inserts “enters”

#### Reason

Clause 39 of the Bill adds a new component to the existing offence of illegal entry. Subsection (2) adds new subsections to section 24 of the Immigration Act 1971. Subsection (C1) makes it an offence for someone who requires entry clearance to arrive in the UK without valid entry clearance.

An entry clearance is a visa issued before travel (it becomes “leave to enter” when the person enters the UK). The burden of proving that a person holds valid entry clearance lies on that person. This is concerning, given that EU citizens are not routinely given any physical evidence of their entry clearance (if they apply using the UK Immigration: ID Check app, no visa vignette is placed in their passport).

The key addition to the offence provision is to make “arrival” an offence. The Explanatory Notes, state: The concept of ‘entering the UK without leave’ has caused difficulties about precisely what ‘entering’ means in the context of the current section 24(1)(a) of the 1971 Act’ paragraph 384.

“Entering” is defined in section 11(1) of the Immigration Act 1971 as disembarking and subsequently leaving the immigration control area. “Arrival” is not given any technical legal definition, so will simply mean reaching a place at the end of a journey or a stage in a journey. It is unclear whether a person needs to reach the mainland in order to “arrive in the United Kingdom”.

The Explanatory Notes, and the separate definitions of “United Kingdom” and “United Kingdom waters”, seem to suggest arrival on the mainland is necessary: This will allow prosecutions of individuals who are intercepted in UK territorial seas and brought into the UK who arrive in but don’t technically “enter” the UK” paragraph 388. Although entering UK territorial waters has not been criminalised, the status of migrants in UK waters is likely to be significantly altered by the new power to

regulate work in territorial waters. The current maximum sentence for illegal entry is six months' imprisonment. This is being increased to four years (or five years for entering in breach of a deportation order).

## NATIONALITY AND BORDERS BILL

### AMENDMENT TO BE MOVED IN COMMITTEE

Clause 40, page 41, line 40

leave out subsection (3)

#### Effect

This amendment deletes clause 40(3) from the bill.

#### Reason

Clause 40 increases the minimum sentence from 14 years to life imprisonment and criminalises helping an asylum seeker to arrive in the UK, even if not for gain. At the moment it is a criminal offence to help an asylum seeker to arrive in the UK if this is done for gain (i.e., if done by a people smuggler). The “for gain” element is being removed.

As a result, almost anyone who helps an asylum seeker to arrive in the UK will potentially be guilty of an offence, subject to whatever defences may be available under criminal law.

We acknowledge that the Government have sought to improve this provision by adding subsection (4) to this clause which seeks to amend the Immigration Act 1971 by adding new section 25BA Facilitation offences: application to rescuers. However we believe this provision does not go far enough to protect from prosecution those who rescue asylum seekers by humanitarian action. Accordingly, we have maintained our position in connection with clause 40(3).

We are also concerned about the effect on Ships’ Masters who save asylum seekers from drowning as they are obliged to do by the Duty to Render Assistance under Article 98 of the UN Convention on the Law of the Sea: UNCLOS and Agreement on Part XI - Preamble and frame index.

There is also a possibility that this provision will engage Article 2 (Right to Life) of the European Convention on Human Rights:

[https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf).

## NATIONALITY AND BORDERS BILL

### AMENDMENT TO BE MOVED IN COMMITTEE

Clause 40, page 42, line 7

add at end—

“(c) the person performing the act of facilitation reasonably believed that if Her Majesty’s Coastguard or the overseas authority had been aware that the assisted individual had been in danger or distress at sea they would have coordinated the act.”

#### Effect

This amendment ensures that a person facilitating the rescue of a person in danger or distress who does not have express orders from HM Coastguard can do so with impunity.

#### Reason

New section 25BA (1), (which is inserted into the Immigration Act 1971 by clause 40(4)) contains some exemptions from the facilitation offence provisions. The bill currently provides:

*(1) A person does not commit a facilitation offence if the act of facilitation was an act done by or on behalf of, or co-ordinated by—*

*(a) Her Majesty’s Coastguard, or*

*(b) an overseas maritime search and rescue authority exercising similar functions to those of Her Majesty’s Coastguard.*

The bill also provides for defences in the event of prosecution in new section 25BA (4)(2).

Whilst such defences are welcome it would be better were the exemption provisions extended to avoid those who reasonably believe that if Her Majesty’s Coastguard or the overseas authority had been aware that the assisted individual had been in danger or distress at sea, they would have coordinated the act. Communications at sea can be difficult and coordination of a rescue can be subject to delays.

Accordingly, HM Coastguard or the foreign equivalent may not be able to inform the person effecting the rescue that they may do under order or subject to coordination by HM Coastguard. This amendment therefore exempts from prosecution a person

carrying out a rescue in circumstances where HM Coastguard or the foreign equivalent would have ordered or co-ordinated the rescue.



## NATIONALITY AND BORDERS BILL

### AMENDMENT TO BE MOVED IN COMMITTEE

Clause 59, Page 63, line 1

leave out subsection (4)

#### Effect

This amendment deletes clause 59 subsection (4).

#### Reason

Clause 59 makes specific reference to the Modern Slavery Act 2015 and amends sections 49, 50 51 and 56 of that Act. It raises the standard of proof for determining a Reasonable Grounds (RG) decision for a victim of trafficking from “suspect but cannot prove” to “balance of probabilities”. Indicators that a person is a victim of trafficking can be missed by First Responders, meaning a referral to the National Referral Mechanism (NRM) is not made. If a referral is made, the RG stage is a sift to determine whether someone may be a victim of trafficking and further investigation is needed. Home Office statistics reveal that 92% of RG decisions are positive, and 89% of Conclusive Grounds (CG) decisions (on the balance of probabilities) are positive. The evidence basis for “over identification” is not made out. The low standard of proof at the RG decision stage helps ensure that potential victims do not miss out from being properly investigated and progressed to the CG stage of the NRM. Raising the standard of proof at RG stage – were minimal information is collected by the Competent Authority – could foreseeably result in fewer referrals being made and will increase the prospect of potential victims not being identified by the NRM, without an investigation even taking place.

## NATIONALITY AND BORDERS BILL

### AMENDMENT TO BE MOVED IN COMMITTEE

Clause 62, Page 64, line 23

after “if” insert “in exceptional circumstances”

#### Effect

This amendment modifies Clause 62 by ensuring that a competent authority may apply clause 62(2) when “exceptional circumstances” affect a person who may be a threat to public order.

#### Reason

Clause 62 excludes from the National Referral Mechanism (NRM) persons who have committed criminal offences, as well as other offences relating to terrorism. It also excludes people who have claimed to be Victims of Terrorism in “bad faith”. This clause appears to divide victim into worthy and unworthy victims. No one should be disqualified from being a victim of one crime because they may have been a perpetrator of another. Victims of trafficking could be criminalised for conduct relating to their trafficking, in breach of Article 26 of the Council of Europe Trafficking Convention.

A violation of Article 4 ECHR was recently found against the UK in this regard by the European Court of Human Rights in *V.C.L. and A.N. v. The United Kingdom* (applications nos. 77587/12 and 74603/12).

This clause introduces a higher risk of double punishment for those victims who have received convictions. Moreover, disqualifying certain victims from protection increases the prospect that they will be further exploited by organised criminal groups, as they will be unable to access protection from the state.

**NATIONALITY AND BORDERS BILL**

**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 62, Page 64, line 25

leave out subsection (b)

Effect

This is a consequential amendment (following on our previous amendment to clause 62) which removes clause 62(1)(b).

## NATIONALITY AND BORDERS BILL

### AMENDMENT TO BE MOVED IN COMMITTEE

Clause 76, page 80, line 1

leave out clause 76

#### Effect

This amendment deletes clause 76 from the bill.

#### Reason

We consider that clause 76 is problematic, unnecessary and unacceptable. The First-tier or Upper Tribunal is to be given powers to charge a person exercising rights of audience or rights to conduct litigation if that person is found to have acted improperly, unreasonably or negligently.

Under current statutory (e.g., the Solicitors (Scotland) Act 1980) and common law powers professional regulators have sufficient powers to deal with matters of professional discipline such as improper or unreasonable conduct.

It is inappropriate that the determination of negligence should be included in the clause when that is properly the province of the civil courts. Furthermore, we note that any amounts charged under this clause for negligence are to be paid to the Consolidated Fund rather than to the client who may have suffered as a result of any alleged negligence. This appears to be a form of taxation rather than compensation for negligence.

This clause needs to be reconsidered.

**NATIONALITY AND BORDERS BILL**

**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 77, page 80, line 34

leave out clause 77

Effect

This is a consequential amendment in connection with the preceding amendment.

## NATIONALITY AND BORDERS BILL

### AMENDMENT TO BE MOVED IN COMMITTEE

Clause 78, page 81, line 23

add at end - "(2) The Secretary of State must consult with such persons as the Secretary of State considers appropriate before making regulations under this section."

#### Effect

This amendment requires the Secretary of State to consult before making regulations under the bill.

#### Reason

This clause gives the Secretary of State power by regulation to amend immigration legislation in order to make pre-consolidation changes to facilitate a consolidation bill. We are in favour of consolidation of the law in general and this applies to Immigration and Asylum law too. We support Recommendation 21 of the Windrush Lessons Learned Review quoted in the Explanatory Notes: "Reduce the complexity of immigration and nationality law, immigration rules and guidance – Building on the Law Commission's review of the Immigration Rules the Home Secretary should request that the Law Commission extend the remit of its simplification programme to include work to consolidate statute law. This will make sure the law is much more accessible for the public, enforcement officers, caseworkers, advisers, judges and Home Office policy makers." However, we also note the broad, discretionary regulation making powers which the Secretary of State will acquire should this provision come into effect. We believe that in such circumstances the Secretary of State must consult with relevant interests before exercising those regulation making powers.

**NATIONALITY AND BORDERS BILL**

**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 80, page 82, line 19

leave out “appropriate” and insert  
“necessary”

Effect

This amendment ensures that the Secretary of State should only make amendments which are necessary.

## NATIONALITY AND BORDERS BILL

### AMENDMENT TO BE MOVED IN COMMITTEE

Clause 81, page 83, line 18

after “to” leave out “affirmative resolution procedure” and insert “the super-affirmative resolution procedure as set out in Schedule [to be inserted]”

#### Effect

This amendment introduces a new schedule and ensures that the Secretary of State must follow super-affirmative when making regulations under this clause.

#### Reason

Clause 81 provides that the Secretary of State may by regulations make such transitional, transitory or saving provision as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Act and make such provision as the Secretary of State considers appropriate in consequence of this Act.

Regulations under subsection (2) can include amending, repealing or revoking any enactment. These are very wide powers (for example they permit the Secretary of State to make regulations considered as “appropriate” rather than “necessary”) although it is correct that the Secretary of State should be able to make transitional transitory and saving provisions. The same argument cannot be made for giving the Secretary of State powers to amend, repeal or revoke any enactment as per clause 67(3). In this context “any enactment” includes (a) an Act of Parliament, (b) retained direct principal EU legislation, (c) an Act of the Scottish Parliament, (d) a Measure or Act of Senedd Cymru, or (e) Northern Ireland legislation. Although such regulations will be subject to affirmative resolution procedure they should be consulted upon within a super-affirmative procedure and, where appropriate require the consent of the devolved legislatures and administrations.



## NATIONALITY AND BORDERS BILL

### AMENDMENT TO BE MOVED IN COMMITTEE

Schedule 6

To move the following Schedule—

Insert the following new Schedule—  
“SUPER-AFFIRMATIVE  
RESOLUTION PROCEDURE

(1) If the Secretary of State considers it necessary to make regulations under this Act which are subject to the super-affirmative resolution procedure, the Secretary of State must lay before Parliament— (a) draft regulations, and (b) an explanatory document.

(2) The explanatory document must introduce and give reasons for draft regulations.

(3) Subject as follows, if after the expiry of the 40-day period the draft regulations laid under paragraph 1 are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the draft regulations.

(4) The procedure in paragraphs 5 to 8 apply to the draft regulations instead of the procedure in paragraph 3 if— (a) either House of Parliament resolves within the 30-day period, or (b) a committee of either House charged with reporting on the draft regulations so recommends within the 30-day period and the House to which the recommendation is made does not by resolution reject the recommendation within that period.

(5) The Secretary of State must consult the: (1) The Scottish

Ministers (2) The Welsh Ministers and (3) The Northern Ireland Executive and have regard to— (4) their representations, (5) any other representations received and (c) any resolution of either House of Parliament, and any recommendations of a committee of either House of Parliament charged with reporting on the draft regulations, made during the 60 day period on the draft regulations.

(6) If, after the expiry of the 60-day period, the draft regulations are approved by each House the Secretary of State may make regulations in the terms of the draft regulations.

(7) If, after the expiry of the 60-day period, the Secretary of State wishes to proceed with the draft regulations but with material changes, the Secretary of State may lay before Parliament— (a) a revised draft of the regulations, and (b) a statement giving a summary of the changes proposed. Which may be approved by each House.

(8) If the revised draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the revised draft regulations.

(9) For the purposes of this Schedule regulations are made in the terms of draft regulations or revised draft regulations if they contain no material changes to their provisions.

(10) In this paragraph, references to the “30-day”, “40-day” and “60-day” periods in relation to any draft regulations are to the periods of 30, 40 and 60 days beginning with the day on which the draft regulations were laid before Parliament