

Commonwealth (Designated Realms) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Drafter, are forthcoming.

EUROPEAN CONVENTION ON HUMAN RIGHTS

The Drafter of the Bill (Mr E Z Granet) has made the following statement, which a minister would be obliged to give under section 19(1)(a), of the Human Rights Act 1998:

In my view the provisions of the Commonwealth (Designated Realms) Bill are compatible with the Convention rights.

Commonwealth (Designated Realms) Bill

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BILL

TO

Make provision in connection with citizens of certain Commonwealth Realms.

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Introductory Provisions

1 General Definitions

(1) In this Act, the following definitions apply:

- (a) 'public authority' has the same meaning as under the Human Rights Act 1998;
- (b) the term 'Application Day' refers to the date one-hundred and eighty days following the commencement of this Act

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2 Definition of 'non-designated Realm'

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(1) In this Act, the term 'non-designated Realm' refers to an independent sovereign State recognised by His Majesty's Government, which fulfils all of the following criteria:

- (a) the State is a member of the Commonwealth of Nations
- (b) the the headship of state is vested in the person of His Majesty the King, and His heirs and successors according to law;
- (c) in the State's legal system, final appellate jurisdiction does not lie with His Majesty in Council.

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3 Definition of 'designated Realm'

(1) In this Act, the term 'designated Realm' refers to the following:

- (a) An independent sovereign State recognised by His Majesty's Government, which fulfils all of the following criteria:
 - (i) the State is a member of the Commonwealth of Nations
 - (ii) the the headship of state is vested in the person of His Majesty the King, and His heirs and successors according to law; 5
 - (iii) in the State's legal system, final appellate jurisdiction lies with His Majesty in Council.
- (b) A non-independent polity (including, but not limited to: province, federal state, sub-division, territory, dependency, or associated state) which fulfils all of the following criteria: 10
 - (i) it shares a common citizenship with a non-designated Realm 15
 - (ii) in the legal system of the non-independent sub-division, territory, dependency, or associated state, final appellate jurisdiction lies with His Majesty in Council. 20

4 Definition of 'citizen of a designated Realm'

- (1) The term 'citizen of a designated Realm' refers to all of the following: 25
 - (a) with regards to designated Realms which are independent States, individuals, who, under the respective law of a designated Realm, possesses the citizenship of said designated Realm 30
 - (i) The preceding provision does not apply in cases where an individual holds the citizenship of a designated Realm aquired primarily as the result of investment or investments, payment, or other pecuniary considerations (including cases where the individual is the dependent of the person who made the pecuniary contribution to aquire such citizenship, or where they have their citizenship only as the result 35

of descent from an individual who gave such pecuniary contribution to acquire citizenship), as opposed to residence, unless such an individual has spent at least four years of a continuous five year period physically present in the sovereign territory of the designated Realm

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(b) with regards to to designated realms which are not independent States, individuals who both:

(i) hold the citizenship of the non-designated Realm of or to which the designated Realm is part or affiliated, under the domestic law of the non-designated Realm; and

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(ii) have not acquired such citizenship primarily as the result of investment or investments, payment, or other pecuniary considerations, as opposed to residence, unless such an individual has spent at least four years of a continuous five year period physically present in the sovereign territory of the non-designated Realm

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(iii) hold, in the designated Realm, a permanent status of affiliation, which may be referred to by terms including but not limited to: 'permanent residence', 'belonger status', 'nationality'

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5 Register of designated Realms

(1) Schedule 1 of this Act shall be referred to as the Register of designated Realms (hereinafter, 'the Register')

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(a) The Register is a comprehensive record of all polities which meet the criteria to designated Realms

(b) With regards to designated Realms which are not independent States, the Register also records the status or statuses (as the case may be) of permanent affiliation acceptable under the domestic law of the designated Realm which serve to help qualify an individual as a citizen of a designated Realm under the criterion in section 4(b)(ii) of

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this Act.

- (2) In the event subsequent to the passage of this Act that changes in the domestic legal and constitutional arrangements of a polity listed on the Register are such that the Secretary of State no longer considers the polity to constitute a designated Realm as defined in this Act, the Secretary of State shall have the power to amend the Register, by way of statutory instrument so as to remove the polity in question from it. 5
- (a) The instrument shall specify the date upon which it takes effect, provided that the instrument removing a polity from the register may take effect sooner than 1 year following its laying. 10
- (b) Subject to the preceding provision, Secretary of State may vary the date at which delisting takes effect by further statutory instrument. 15
- (c) In the period between the laying of the instrument and it taking effect, the Secretary of State shall grant all citizens of the polity being removed who are domiciled in the United Kingdom the opportunity to apply, without charge, for permanent settlement in the UK following the delisting of their polity of citizenship from the Register, and shall generally grant such settled status except where clear and convincing circumstances indicate that it is a necessary and proportionate measure in the public interest to deny such status to an applicant. 20 25
- (3) In the event subsequent to the passage of this Act that changes in the domestic legal and constitutional arrangements of a polity not listed on the Register are such that the Secretary of State now considers the State (or, as the case may be, non-independent polity eligible to be considered a designated Realm) to constitute a designated Realm, the Secretary of State shall have the power to amend the Register, by way of statutory instrument so as to add the State (or, as the case may be, non-independent polity eligible to be considered a designated Realm) in question to it. 30 35
- (4) In the event subsequent to the passage of this act that changes in the domestic legal and constitutional arrangements of a

non-independent polity considered a designated Realm are such that the Secretary of State now considers that the qualifying permanent status of affiliation listed in the Register requires revision, or that a new non-independent polity is added to the Register, the Secretary of State shall have the power to amend the Register, by way of statutory instrument so as to alter or add a record of qualifying status of permanent affiliation recorded there.

(5) In the event that a designated Realm changes its official name, the Secretary of State shall have to amend the Register, by way of statutory instrument, so as to record the correct name.

(6) A court or tribunal shall regard a State's presence or absence from the Register as conclusive, irrebutable evidence of whether or not a State (or, as the case may be, non-independent polity eligible to be considered a designated Realm) is or is not a designated Realm.

(a) The preceding provision does not in any way affect the amenability or unamenability (as the case may be) to judicial review of the decisions of the Secretary of State under existing law, expressly including those decisions with regards to the content of the Register.

(7) A statutory instrument containing amendments under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

Treatment of Citizens

6 Treatment of citizens of designated Realms

(1) The succeeding provisions in this section shall come into force upon Application Day

(2) A public authority shall treat and regard citizens of designated Realms in like manner to how said authority treats and regards citizens of Ireland (with reference to all of law, policy, custom and practice) according to the former category of citizens all the rights, privileges, and obligations enjoyed by and incumbent upon the latter category of citizens.

(3) Except where to do so would cause manifest absurdity, all references in existing legislation to citizens of Ireland shall be generally

interpreted as applying to citizens of designated Realms

- (a) The references in the preceding provisions to the manner of treatment of the citizens of Ireland and the rights, privileges, and obligations enjoyed by and incumbent upon said citizens shall be interpreted as referring only to the manner treatment of and rights, privileges, and obligations enjoyed by and incumbent upon said citizens subsisting prior to Application Day. 5
- (b) In accordance with the above, no changes to the manner of treatment of nor the rights, privileges, and obligations enjoyed by and incumbent upon the citizens of Ireland which occur subsequent to Application Day shall be relevant for the purposes of this Act. 10
- (4) The applicability of the preceding provision shall be subject to the provisions contained in the subsequent sections of this Act. 15

7 Saving provisions

- (1) Nothing in this Act shall be construed so as to affect, diminish, or erase criminal nor civil liability for actions which were unlawful prior to the coming into force of this Act, and, following the commencement of this act, a public authority may continue bring criminal prosecutions, civil actions, administrative penalties, and similar measures against citizens of designated Realms for circumstances occurring prior to Application Day. 20 25
- (2) Notwithstanding anything else in this Act, the following shall continue to remain valid, legal, executable, and enforceable following lawfulness of the following, and a public authority may disapply section 3 of this Act to the extent necessary to maintain said validity, legality, executability, and enforceability, insofar as the following occurred, arose, commenced, began, or were initiated (as applicable) prior to Application Day: 30 35
 - (a) Removal orders
 - (b) Lawful detention, including for the purposes of immigration enforcement
 - (c) All administrative measures and policies with the effect

of banning or excluding an individual from entering the United Kingdom, either temporarily or permanently

- (i) The preceding provision applies only to those administrative measures and policies which name the specific individual banned or excluded, and does not apply to administrative measures or policies general or non-specific bans or exclusions

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8 Disapplication

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- (1) Other than as expressly provided for in the provisions of this Act, a public authority may not disapply section 3 of this Act.
- (2) Where a citizen of a designated Realm committed a criminal offence or offences prior to Application Day which, but for the operation of section 3 of this Act, would have given rise to liability to removal from the United Kingdom, a public authority may disapply section 3 of this Act and seek the removal of said citizen of a designated Realm.
- (3) Where a citizen of a designated Realm engaged in fraud or deception prior to Application Day which, but for the operation of section 3 of this Act, would have given rise to liability to removal from the United Kingdom, a public authority may disapply section 3 of this Act and seek the removal of said citizen of a designated Realm.
- (4) In the event that circumstances individual to a particular citizen of a designated Realm are such that the application of section 3 of this Act to said citizen of a designated Realm would pose a severe and imperative threat to national security, public health, public order, animal life, plant life, or human life, and disapplication is a necessary and proportionate response to this danger, and where no lesser measures would suffice, the Secretary of State, by means of a public notice published in the London Gazette, disapply section 3 of this Act with respect to that individual.
- (a) Such a declaration must contain detailed reasons for the Secretary of State's decision.
- (b) Such a notice shall take effect, unless otherwise specified, seven days following its publication in the London Gazette.

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- (c) No declaration under this subsection shall be effective if it refers to more than one individual.

9 Consequential and supplementary provision

The Secretary of State or any appropriate Minister may at any time by order make such incidental, consequential, transitional or supplementary provision as may appear to him or her to be necessary or proper for the general or any particular purposes of this Act or in consequence of any of the provisions thereof or for giving full effect thereto.

Identification matters

10 Evidence of citizenship (case of independent designated Realms)

- (1) Where a public authority or private actor requires evidence that a person is a citizen of an independent designated Realm, a passport from such an independent designated Realm shall be acceptable evidence, provided that there is no reasonable suspicion that the passport belongs to an individual other than the bearer, or is forged or altered.

- (a) The Secretary of State is empowered to create, by way of statutory instrument, other forms of identification, such as national identity cards, issued by an independent designated Realm or Realms which will suffice as evidence

- (i) In the event such an instrument is issued, the Secretary of State shall issued detailed guidance for public authorities and private actors on how to recognise authentic forms of such identification.

11 Evidence of citizenship (case of non-independent designated Realms)

- (1) Subsection one of this section shall apply to citizens of non-independent designated Realms with regards to evidencing the required status described in section 4(b)(i) of this Act.
- (2) For the additional status described in section 4(b)(ii) of this Act, an endorsement in a passport, or record of location of birth in a passport, will suffice as evidence for a public authority or private

actor unless there is reason to suspect the endorsement or location of birth does not refer to the bearer or is fraudulent.

- (3) The Secretary of State may, by way of statutory instrument, designate, for each non-independent polity, specific requirements for proof of the status in section 4(b)(ii) of this Act. 5
- (4) For each non-independent polity on the Register, the Secretary of State shall issued detailed guidance on how to identify the authentic forms of recognised identification.

12 Special rules for designated realms which sell citizenship 10

- (1) At least 28 days before Application Day, the Secretary of State shall publish, by way of statutory instrument, a list of designated Realms which are known to to sell or grant citizenship in exchange for investments, payments, or other primarily pecuniary considerations (hereinafter referred to as ‘designated Realms which sell citizenship’). 15
- (2) The Secretary of State may, by way of statutory instrument alter this register from time to time as necessary to reflect any changes in the factual circumstances. 20
- (3) For individuals who are citizens of designated Realms which sell citizenship, the evidence for demonstrating citizenship set out in sections nine and ten of this Act must be accompanied by one of the following to be sufficient: 25
 - (a) A sworn declaration witnessed by a member of a profession authorised to act as a Comissioner for Oaths attesting that the individual did not aquire their citizenship in exchange for pecuniary considerations as defined in section four of this Act. 30
 - (b) sworn declaration witnessed by a member of a profession authorised to act as a Comissioner for Oaths attesting that the individual did aquire their citizenship in exchange for pecuniary considerations as defined by section four of this Act, but meet the criteria for the residency exception set out in section four of this Act for. 35
- (4) Any individual unable to provide such evidence shall not be considered a citizen of a designated Realm.

- (5) For the purposes of clarifying existing criminal law, declarations made under the preceding provisions which are untrue are considered to constitute the common law offence of perverting the course of justice.

13 Negating effect of deception

No individual shall be considered a citizen of a designated realm where the preponderance of available evidence demonstrates that the individual engaged in deception towards a public authority or private person regarding any matter related to evidence of his or her citizenship of a designated Realm.

14 Short title and extent

- (1) This Act may be cited as the Commonwealth (Designated Realms) Act 2022.
- (2) This Act applies to England, Wales, Scotland, and Northern Ireland.

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SCHEDULES

SCHEDULE 1

REGISTER OF DESIGNATED REALMS

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PART 1

DESIGNATED REALMS WHICH ARE INDEPENDENT STATES

1 The following States are designated Realms:

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- (1) Antigua and Barbuda
- (2) Commonwealth of the Bahamas
- (3) Grenada
- (4) Jamaica
- (5) Federation of Saint Christopher (Saint Kitts) and Nevis
- (6) Saint Lucia
- (7) Saint Vincent and the Grenadines
- (8) Tuvalu

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PART 2

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DESIGNATED REALMS WHICH ARE NOT INDEPENDENT STATES

List of polities

1 The following polities are designated Realms:

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- (1) Cook Islands
 - (a) For the above polity, the statuses of ‘Cook Islander’ and ‘permanent resident’, as endorsed in a New Zealand passport, qualify for the purposes of section 5(4)(b)(iii) of this Act
- (2) Niue
 - (a) For the above polity, the following statuses or qualities qualify for the purposes of section 5(4)(b)(iii) of this Act:
 - (i) permanent resident
 - (ii) Birth in Niue (both for Niueans and non-Niueans)

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- (iii) Someone whose parent is a New Zealand citizen born in Niue
- (iv) Someone who has at least one parent who is a New Zealand citizen born in Niue
- (v) Someone who has at least one parent who is a permanent resident and ordinarily resident in Niue, as defined by the Immigration Act 2011 (Niue)

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B I L L

To make provision in connection with the citizens of certain Commonwealth
Realms

Presented by The Drafter of the Bill (Mr E Z Granet)

*Ordered, by The Drafter of the
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