

Legislative Consent Memorandum

Border Security, Asylum and Immigration Bill

Background

1. This memorandum has been lodged by Shirley-Anne Somerville MSP, Cabinet Secretary for Social Justice, in accordance with Rule 9B.3.1(a) of the Parliament's standing orders.

2. The Border Security, Asylum and Immigration Bill ("the Bill") was introduced by the UK Government in the House of Commons on 30 January 2025. The Bill is available on the UK Parliament website via this link: [Border Security, Asylum and Immigration Bill - Parliamentary Bills - UK Parliament](#)

Content of the Bill

3. The Bill makes provision to improve UK border security and strengthen the asylum and immigration system by creating a framework of new and enhanced powers and offences that reinforce, strengthen and connect capabilities across the relevant government and law enforcement partners which make up the UK's border security, asylum and immigration systems.

4. The Bill as introduced consists of 57 clauses and two schedules. The Bill includes the following measures:

- Clauses 1 to 12 set out provisions to make the Border Security Commander a Statutory Office Holder and details their functions in this role.
- Clauses 13 to 18 set out new offences in relation to the preparatory acts to commit an immigration offence and endangering another during a sea crossing to the United Kingdom.
- Clauses 19 to 26 set out the powers for an immigration officer or police constable to search, seize and retain information stored on electronic devices.
- Clauses 27 to 33 relate to the sharing of customs information by His Majesty's Revenue and Customs (HMRC) with other government departments and the devolved administrations and the sharing of trailer registration information to assist with functions which include policing and law enforcement functions.
- Clauses 34 and 35 allow biometric information to be taken from evacuees etc. outside of a visa application process and the use and retention of that information.

- Clause 36 sets out a new power for police to take biometric data from persons detained at ports in Scotland.
- Clauses 37 to 39 repeal the Safety of Rwanda (Asylum and Immigration Act) 2024 in its entirety and specified sections of the Illegal Migration Act 2023. These clauses also make consequential amendments to other relevant immigration legislation because of these repeals.
- Clause 40 amends the term for which the Immigration Services Commissioner can hold office and makes amendments in relation to the appointment process of the Deputy Commissioner. The clause also enables the Secretary of State to nominate a member of the Commissioner's staff to act in place of the Commissioner where neither the Commissioner nor a Deputy can undertake the role.
- Clause 41 sets out changes to the powers to detain a person, take fingerprints from them, photographs of them and obtain nationality documentation from them ahead of deportation.
- Clause 42 expands the list of persons authorised to take fingerprints at detention centres in Scotland.
- Clauses 43 to 45 set out new offences in relation to the articles used in serious crime.
- Clauses 46 to 50 set out amendments to Serious Crime Prevention Orders and the introduction of Interim Serious Crime Prevention Orders for terrorism cases.
- Clause 51 establishes retrospective power for the charging of fees for services related to the comparability, recognition and assessment of qualifications obtained outside and within the United Kingdom.

Territorial extent and application

5. Clause 55 sets out the extent of the provisions of the Bill. The Bill extends to England and Wales, Scotland and Northern Ireland. Clauses 19 to 26 extend to Scotland but do not apply to police constables in Scotland. Clause 36 is only relevant to Scotland. Clauses 46 to 50 are mostly relevant only to England and Wales, except for terrorism cases under clause 46 and breach of an interim SCPO in non-terrorism cases under clause 47 (see Annex A to the Bill's explanatory notes).

Commencement

6. Under clause 56, most of the clauses would not come into force until the Home Secretary appoints a date in commencement regulations. Clauses 37 to 40 and most of clause 41 would come into force automatically on the day the Bill is passed. Clauses 34, 35 and 42 would come into force automatically two months after the Bill is passed.

7. The Bill contains three clauses which would enable UK Government ministers to amend or repeal provisions of primary legislation using secondary legislation:

- Clause 15(3): power to add to the list of items which are excluded from the scope of the new offences in clauses 13 and 14;
- Clause 44(3): power to add to the list of items which are included in the scope of the new criminal offence in clause 43;
- Clause 53(1): power to make consequential amendments. The delegated powers memorandum identifies and discusses these clauses, along with other provisions allowing for secondary legislation.

Provisions which require the consent of the Scottish Parliament

Clauses 30 to 33 (trailer registration information)

8. Clause 30 empowers the Secretary of State to supply trailer registration information to a variety of persons for purposes including law enforcement purposes, human welfare purposes and specified purposes relating to policing. Clause 31 permits onward sharing of this information by a recipient with a person exercising public functions (including outside the UK) relating to similar purposes. Under clause 33(8), “specified purposes relating to policing” is a concept to be defined in regulations made by the Secretary of State, following consultation with (amongst others) the Scottish Ministers (clause 33(9)).

9. The information concerned will have been obtained and retained by the Secretary of State in connection with reserved functions relating to road traffic. However, the provisions enable the sharing (and use) of this information with a range of people including police officers for a broad range of purposes which include devolved purposes, although the information will also be able to be shared for purposes which are reserved such as customs and immigration. There is therefore a devolved element which requires an LCM, although the UK Government has not sought consent for these provisions. This is on the basis that although the purpose of the provision is partly reserved, it will be possible to use the information obtained under it for a variety of devolved purposes – which will be of benefit to Scottish policing when investigating matters of a devolved nature.

Clause 36 (biometric data of persons)

10. Clause 36 creates a new power to enable the biometric data of persons detained in Scotland to be taken at ports, thereby bringing the position in Scotland into line with that in England, Wales and Northern Ireland. Currently in Scotland, individuals have to be taken to a police station in order to have their biometric data taken.

11. Although the UK Government has not sought consent for clause 36, our view is that the clause triggers the requirement for an LCM. This is on the basis that the provision has a dual purpose. While the purpose of the amendments being made in the clause are partly for the purpose of counter-terrorism (which is reserved), the

effect of the provisions is such as to extend the use of biometric data for devolved purposes (e.g. the prevention/detection of crime).

Clause 38 (repealing the Illegal Migration Act 2023 provisions)

12. Clause 38 of the Bill repeals specified sections of the Illegal Migration Act 2023. The provisions being repealed include sections 24 and 28 of that Act, which disapplied specified powers and duties of the Scottish Ministers in the Human Trafficking and Exploitation (Scotland) Act 2015 (“the 2015 Act”).

13. The UK Government have not sought consent for clause 38 as their view is that it is not a relevant provision. The Scottish Government’s view is that clause 38 requires the consent of the Scottish Parliament as it alters the executive competence of the Scottish Ministers.

14. Section 24 of the Illegal Migration Act, whilst it was never fully brought into force, would have disapplied specified human trafficking support provisions (the disapplied provisions are detailed below) relating to support in Scotland to persons:

- in respect of whom the Secretary of State is under the duty to make removal arrangements in section 2(1) of the Illegal Migration Act; and
- in receipt of a positive reasonable grounds decision (that the adult is a victim of an offence of human trafficking), unless:
 - they are cooperating with a public authority in connection with an investigation or criminal proceedings in respect of the relevant exploitation;
 - the Secretary of State considers that it is necessary for the person to be present in the UK to provide that cooperation but the Secretary of State must assume that it is not necessary for the person to be present in the UK for such purposes unless there are compelling circumstances which require their presence; and
 - the Secretary of State does not consider that the public interest in the person providing that cooperation is outweighed by any significant risk of serious harm to members of the public which is posed by the person.

15. The support provisions from which persons, meeting the above criteria, were to be excluded are section 9(1) and (3) of the 2015 Act. Section 9(1) places a duty on the Scottish Ministers to secure the provision of support and assistance for adult victims of human trafficking, on an assessment of needs, during a defined period. Section 9(3) gives the Scottish Ministers discretion to arrange the provision of support and assistance outwith the mandatory period. Section 24 of the Illegal Migration Act would also have disapplied any duty or power of the Scottish Ministers in regulations made under section 10(1) of the 2015 Act, relating to the provision of support and assistance to an adult victim of slavery, servitude or forced or compulsory labour, from persons meeting the above criteria.

16. The Scottish Government considered section 28 of the Illegal Migration Act was a relevant provision as it directly amended sections 9 and 10 of the 2015 Act, by reference to the restrictions placed upon these provisions by section 24. Section 28 of the Illegal Migration Act has not been brought into force.

17. The UK Government did not consider that sections 24 and 28 of the Illegal Migration Act altered the executive competence of the Scottish Ministers when the Bill for that Act was passing through the UK Parliament and subsequently do not consider clause 38 of this Bill to be a relevant provision. The Scottish Government's view is that sections 24 and 28 of the Illegal Migration Act altered the executive competence of the Scottish Ministers as their powers and duties vis-a-vis victims of human trafficking were modified by these provisions. Sections 24 and 28 of the Illegal Migration Act have not been fully brought into force, however, these provisions were duly enacted by the UK Parliament, therefore, altering the executive competence of the Scottish Ministers under the Human Trafficking and Exploitation (Scotland) Act 2015.

18. Section 24 and 28 of the Illegal Migration Act 2023 are being repealed by clause 38 of this Bill. The Scottish Government's view is that reversing the position established by the Illegal Migration Act will again alter the executive competence of the Scottish Ministers by returning it to the position that existed prior to the enactment of the Illegal Migration Act. This means that the Scottish Ministers will continue to have the power (via the 2015 Act) to support victims of human trafficking irrespective of when they arrived in the UK and their means of arrival. It is our view that clause 38 of the Border Security, Asylum and Immigration Bill accordingly alters the executive competence of the Scottish Ministers and is a relevant provision in terms of Standing Orders Rule 9B.1.

Clause 41 (detention and exercise of functions pending deportation)

19. Clause 41 provides the Secretary of State with a power to authorise detention of a person whilst they consider whether to make a deportation order against the person or whilst they are considering whether the person is a person to whom automatic deportation of foreign criminals (under section 32(5) of the UK Borders Act 2007 ("the 2007 Act")) applies. It further makes changes to pre-existing powers for authorised persons, including police constables, to take fingerprints and photographs of the persons concerned, where they are detained under these circumstances. It also expands where the Secretary of State can direct detainee custody officer, prison officers or prisoner custody officers to search for, or seize, identity documents of this new category of detainee. For the fingerprints, which are taken under section 141 of the Immigration and Asylum Act 1999, section 8 of the 2007 Act provides that regulations can be made to allow the use of these fingerprints in the investigation of crime, and such regulations have been made. The power to take photographs sits in the Immigration (Collection, Use and Retention of Biometric Information and Related Amendments) Regulations 2021, and these regulations also allow the photographs taken for immigration purposes to be used in the investigation of crime.

20. Where fingerprints or photographs are taken under the existing legislation that this amends, they can be used for reserved purposes in relation to immigration, or in relation to other purposes, such as the investigation of crime. Police powers and investigation of crime is a devolved matter. This provision therefore widens the circumstances in which fingerprints and photographs can be obtained and then ultimately used for devolved purposes. It is considered that these provisions therefore engage the legislative consent motion process, although the UK Government do not consider that clause 41 triggers the need for legislative consent.

Clause 42 (biometrics)

21. Clause 42 expands the list of persons authorised to take fingerprints from people with particular types of immigration status at detention centres in Scotland. The purpose of the provisions being amended by clause 42 is therefore partly a reserved one. The fingerprints can be retained only if this is considered necessary in connection with a function under the Immigration Acts or a function related to nationality. Therefore, the retention would also be for a reserved purpose. However, section 8 of the 2007 Act, as applied by section 144A, provides for the making of regulations governing the uses to which biometric data taken, and retained, for immigration purposes can be put. Those uses can be broad and may include the investigation, prosecution or prevention of offences; the identification of people who have died or are ill or injured etc. (and these powers have in fact been exercised). These broader purposes are largely devolved purposes. Therefore, clause 42 should be included as a relevant provision in the LCM for this Bill because it enhances the possibilities for taking fingerprints which can then be used for devolved purposes, although the UK Government do not consider that clause 41 triggers the need for legislative consent.

Clauses 43 to 45

22. Clauses 43 and 44 create new offences for the possession of a relevant article where a person intends, or there are reasonable grounds to suspect, that it will be used in any serious crime; and of the importing, making, adapting, supplying, offering to supply a specified article where there are reasonable grounds to suspect that the article will be used in any serious crime.

23. The list in the Bill of articles used in serious crime includes a 3D printer firearms template; an encapsulator; a tablet press; and a vehicle concealment. The Secretary of State may by regulations amend this section in the Bill including amending the list of articles, only if it is considered that there is a significant risk of such an article being used in connection with any serious offence. The Secretary of State will be required to **consult** Scottish Ministers if there is a requirement to make regulations to change the measures.

24. While clauses 43 and 44 relate to a combination of reserved and devolved matters, the purpose of the provision is to create new offences to criminalise the use of articles used in serious crime, which would be within devolved competence. We agree with the UK Government's assessment that the LCM process is engaged insofar as clauses 43 and 44 relate to devolved matters.

25. Clause 45 makes amendment to the Proceeds of Crime Act 2002 (“POCA”) as it applies to Scotland. In particular, it adds the new offences in clauses 43 and 44 to the “criminal lifestyle” offences in schedule 4 of POCA. Similar to the above, the clauses relate to a combination of reserved and devolved matters and given that it relates to devolved matters, the LCM process is engaged.

Clause 48

26. While clause 48 makes no changes to those individuals in Scotland who can apply for a SCPO, it will have the effect of replacing the existing section 8 of the Serious Crime Act 2007 and therefore engages the legislative consent process. The UK Government have not sought consent for this provision.

Clause 51 (validation of fees charged in relation to qualifications)

27. Clause 51 establishes retrospective power for the charging of fees for services related to the comparability, recognition and assessment of qualifications obtained outside and within the United Kingdom, in connection with the UK European Network of Information Centres (ENIC) services. It has been determined that these fees in whole or part require, or may require, a statutory basis. This statutory basis has not been in place for a part or the whole of the period of their being charged by several government departments, currently the Home Office and the Department for Education. Establishing retrospective power for these fees to be charged removes the possibility of customers requesting refunds for fees paid for services, the benefits of which they have fairly received. Clause 51 relates to fees charged for services related to the comparability, recognition and assessment of qualifications, which is not a reserved matter; therefore, the LCM process is engaged in respect of charging of fees from Scottish organisations or individuals for services provided to them.

Reasons for seeking legislative consent

Clauses 30 to 33

28. We recommend that the Parliament consents to this clause. This is on the basis that it will be possible to use the information obtained under it for a variety of devolved purposes – which will be of benefit to Scottish policing when investigating matters of a devolved nature.

29. It is appropriate for the UK Parliament to make this provision because whilst there is a devolved aspect to it, the provision relates to information the Secretary of State obtains initially for reserved purposes. In addition, there is no known Scottish legislative vehicle that could be used to make provision as to how the police would use the information this relates to once they had it.

Clause 36

30. We recommend that the Scottish Parliament consents to this clause due to the benefits it could bring to Scottish policing. It offers Police Scotland the option to take biometric data from an individual at the port, rather than having to spend time and resource taking the individual to the nearest police station. Also, the additional effect of the provisions will increase the volume of biometric data available to Police Scotland for searching against in respect of investigations into devolved offences.

31. Given that the biometric data is being taken primarily for immigration purposes, and the Scottish Parliament would not be able to legislate for immigration purposes, it would be inappropriate for the Scottish Parliament to take forward this legislative change. It would be possible for the Scottish Parliament to legislate for the taking of biometric data by Police Scotland outwith a police station for all or some devolved offences - which would then provide the benefit around facilitating the investigation of crime etc. However, such a broad-ranging power would go much further than the specific situation of taking data solely at ports. Such a broad proposal would be novel and substantive. With respect to the devolved aspect, there is no obvious parliamentary vehicle to legislate around police powers.

Clause 38

32. It is the Scottish Government view that these sections 24 and 28 of the Illegal Migration Act 2023 altered the executive competence of the Scottish Ministers. However, it was not within the legislative competence of the Scottish Parliament to repeal these provisions. Therefore, it is appropriate that the UK Government make provision in this Bill to ensure that the Scottish Ministers' devolved powers are not restricted and we recommend that Parliament support it.

33. As set out above, sections 24 and 28 of the Illegal Migration Act were never brought into force. However, the impact of their presence in the Act was significantly traumatising for victims of human trafficking. Repealing the provisions will provide greater certainty for victims (and potential victims) about access to support available in Scotland and enable support providers to deliver a greater degree of assurance around potential outcomes for individuals.

34. During the passage of the Illegal Migration Act, the Scottish Government was clear that the provision of support and assistance to victims of human trafficking in Scotland was a vital and necessary intervention. The Scottish Government remains committed to the identification of trafficking victims and that this is underpinned by the necessary support and assistance to stabilise and begin their recovery.

Clauses 41 and 42

35. Although the purpose of clause 41 is partly reserved, it will be possible to use biometric data obtained under it for a variety of devolved purposes and, given there is a devolved effect, we consider there is an associated devolved purpose. Therefore, our view is that the clause triggers the requirement for legislative consent.

36. We recommend that Parliament consents to this clause. This is on the basis that although the purpose of the provision is partly reserved, it will be possible to use the information obtained under it for a variety of devolved purposes – which will be of benefit to Scottish policing when investigating matters of a devolved nature.

37. Although the purpose of clause 42 is partly reserved, it will be possible to use biometric data obtained under it for a variety of devolved purposes and, given there is a devolved effect, we consider there is an associated devolved purpose. Therefore, our view is that the clause triggers the requirement for legislative consent.

38. We recommend that the Scottish Parliament provides consent to this clause as, similar to Clauses 36 and 41, although the purpose of the provision is partly reserved, it will be possible to use the biometric data obtained under it for a variety of devolved purposes – which will be of benefit to Scottish policing when used to investigate matters of a devolved nature.

39. The devolved aspect of clauses 41 and 42 sits downstream from a number of reserved aspects. Clause 41 provides for the Secretary of State to detain persons whilst decisions relating to their immigration status are made. The clause then makes amendments to existing legislative provision around fingerprinting and the taking of photographs of these persons, to ensure that authorised persons, including police constables, can take photographs or fingerprints. Clause 42 provides for the Secretary of State to expand the list of persons authorised to take fingerprints from people with particular types of immigration status at detention centres in Scotland. In both clauses, the fingerprints or photographs taken by the authorised person can then be used by constables of Police Scotland for the investigation of crimes, including devolved crimes.

40. It is considered that legislating for use of fingerprints already available to Police Scotland, or in relation to the investigation of crime generally, is a devolved matter. However, the Scottish Parliament could not legislate to allow for the extension of detention powers or other police powers specifically in immigration matters, therefore the mixture of reserved and devolved aspects mean that it is better for the UK Parliament to legislate here.

41. With respects to the devolved aspect (Police Scotland use of fingerprint and photograph evidence), there is no obvious parliamentary vehicle to legislate around police powers. It is also clearer here to have conformity across the UK in relation to these provisions, rather than making separate Scottish provision on the use of fingerprints and photographs by police constables in Scotland to investigate crime.

Clauses 43 to 45

42. The measures in clauses 43 to 44 to create new offences to criminalise the use of articles used in serious crime and clause 45 includes an amendment to the Proceeds of Crime Act 2002 to include the new offences in the list of “criminal lifestyle” offences in schedule 4 of POCA. These measures are a mix of reserved and devolved matters therefore, it is appropriate that the UK Government make

provision in this Bill to ensure that the Scottish Ministers' devolved powers are not restricted.

43. Our view is that these clauses engage the need for legislative consent and we recommend that Parliament consents to these clauses so that a UK wide approach is taken as it is important that Scotland is not seen as a soft target for organised crime groups.

Clause 48

44. Clause 48 has the effect of substituting a new section 8 of the Serious Crime Act which lists those public authorities that can apply for a SCPO or an interim SCPO.

45. It is therefore necessary for clause 48 to apply to Scotland to ensure that a relevant applicant authority can apply to the appropriate court for a SCPO or an interim SCPO and we recommend that the Scottish Parliament provides consent.

Clause 51

46. Clause 51 relates to the comparability, recognition or assessment of qualifications in connection with the European Network of Information Centres (ENIC) services, which offer a range of data and support linked to comparability of qualifications from abroad. The UK's National Information Centre ("UK ENIC") provides these services ("the UK ENIC services") on a UK-wide basis through a UK-wide service contract put in place by the UK Government.

47. This provision is one of three legislative actions being taken at pace to address the lack of a statutory basis in Scotland for charges for the UK ENIC services, and to put in place agency arrangements for the delivery of the services by UK Ministers on Scottish Ministers' behalf. A negative SSI (in breach of standing orders) will shortly be laid in respect of charges under the new UK-wide service contract to commence on 28th March. Steps are underway to agree a section 93 Order under the Scotland Act which will specify functions to allow for agency arrangements to be put in place.

48. Clause 51 establishes retrospective power for the charging of fees for UK ENIC services already delivered. The Scottish Government's view is that the retrospective effect of this provision is appropriate in the circumstances and that it is prudent that this provision is made to remove any small risk of customers of the service (including in Scotland) requesting refunds for fees already charged (including from the Scottish Government) on the basis that there was no statutory basis for those fees having been charged.

49. Given that the UK ENIC services operate on a UK-wide basis and are delivered by the UK Government on behalf of Scottish Ministers, it is considered appropriate for the UK Parliament to legislate for Scotland as proposed in Clause 51.

Consultation

50. Formal stakeholder engagement on the detail of the Bill at a UK level is still in early stages. The House of Commons call for evidence on the Bill was launched on 11 February 2025. The Public Bill Committee will meet for the first time on Thursday 27 February 2025 to consider the Bill and hear oral evidence. The Committee will then report by the latest time of 5pm on Thursday 20 March, though it can conclude earlier than this, if deemed appropriate.

51. The Scottish Refugee Council and British Red Cross provided evidence to the PBC on the Bill during the session on 27 February.

52. There has been some initial engagement with stakeholders to understand views. A number of stakeholder organisations have made public statements or published briefings setting out their position on the Bill as introduced.

53. Public commentary on the Bill so far includes views that the UK Government's aims "are essentially the same as its predecessor"¹ (Amnesty) and that the Bill "misses a crucial opportunity to drive meaningful change to ensure that all victims of exploitation are protected, whatever their immigration status"² (FLEX). While some stakeholders welcome the approach to tackle exploitative practice through strengthened powers to criminalise, there are concerns that asylum seekers and refugees themselves may be prosecuted as a result³ (Refugee Council). There is also consensus across organisations supporting asylum seekers and refugees that this Bill does not remove the need for safe and legal routes for people fleeing persecution, violence and conflict to seek safety in the UK, and that without safe routes, there is an increased reliance on people smugglers and movement of people by irregular means.

54. The British Red Cross have outlined their views welcoming aspects of the Bill such as increased flexibility in taking biometrics. However, in their view, the Bill does not go far enough to address the underlying reasons why people put their lives in the hands of people smugglers including the fact there is no way to claim asylum outside of the UK, and the fact that available safe routes, such as resettlement schemes, are limited. Other concerns include risks of inadmissibility processes being used to restrict access to the asylum system.

55. The Scottish Refugee Council have outlined views welcoming the provisions repealing the Safety of Rwanda (Asylum and Immigration) Act 2024 and some parts of the Illegal Migration Act. However, they are concerned at the Bill's retention of some provisions from the Illegal Migration Act, including those concerning expanded detention powers, the list of countries for inadmissible asylum claims and section 29 of the Act which disqualifies protections for individuals identified as potential victims of modern slavery or trafficking if they are deemed a "threat to public order" or have

¹ [Border Security, Asylum and Immigration Bill](#): Amnesty International

² [Border Security, Asylum and Immigration Bill: Still a Tool for Exploitation](#): Focus on Labour Exploitation

³ [Our response to the introduction of the Border Security, Asylum and Immigration Bill](#): Refugee Council

made claims in “bad faith”. They also echo concerns from other stakeholders that refugees themselves could also be prosecuted through some of these new offences.

56. Significant stakeholder engagement was carried out both throughout the progression of Illegal Migration Bill through the UK Parliament and after the Bill received Royal Assent and became an Act. The Scottish Government convened a stakeholder summit in June 2023 bringing together key partners and stakeholders including Scottish Refugee Council, Trafficking Awareness Raising Alliance (TARA), JustRight Scotland, COSLA and the Children and Young People’s Commissioner’s office to co-ordinate a collective response to the Bill in Scotland.

57. Stakeholders shared concerns about the Act’s approach to international human rights obligations and the risks of provisions pushing vulnerable people further into exploitation and destitution and punishing survivors of trafficking rather than tackling the criminals who exploit them. The Act removed the right to seek asylum for people arriving in the UK ‘irregularly’, rendering them permanently inadmissible for any protection status. In particular, stakeholders were concerned that sections 24 and 28 of the then Bill, would restrict Scottish Minister’s powers in relation to victims of human trafficking and modern slavery and the impact this would have on already vulnerable people in Scotland.

58. We therefore understand that stakeholders welcome the repeal of certain provisions of the Illegal Migration Act and the entirety of the Safety of Rwanda Act within this Bill, particularly where doing so addressed some of the concerns outlined above. However, we know there are some who feel the provisions within this Bill do not go far enough to differentiate the current UK Government’s approach to the previous administrations.

59. Police Scotland has been consulted on their views on elements of the Bill which would have a potential impact on their operations, and have provided feedback on clauses 3,5,6, 13-18, 19-26, 27-33, 36, and 43-47, including a wider request for clarification from the Home Office around financial implications (see below).

60. With regards to clauses 43 to 45 specifically, there has also been engagement with Crown Office and Procurator Fiscal Service. This engagement has been limited given these measures were in the Criminal Justice Bill that fell last year and their views were already considered. Further comments have been received in regards to including more articles to the list and the drafting of the measures. Scottish Government officials are engaging with the UK Government on any technical amendments that are required.

61. With regard to clause 51, no public consultation has been undertaken as there is not a substantial impact on users of the UK ENIC services or fundamental changes to the services offered.

Financial implications

62. There has been some early engagement between Scottish Government and the Home Office to gain clarity on the funding position relating to the Bill. This funding would be expected to be supported by resulting Barnett consequentials. Where this is not sufficient, and provisions are for reserved purpose, it is expected that costs would be borne by the UK Government as set out in their [Impact Assessment](#) for the Bill, estimating associated costs where these are known.

63. There is no differentiation of costs for the devolved context in their assessment and so further assessment may be required to understand any financial implications on devolved governments, public sector bodies or partners as a result of the provisions, where the burden of these costs are not carried by the UK Government.

64. With regard to clause 51, there are no financial implications. Clause 51 establishes retrospective authority for the charging of fees, including fees charged by the UK ENIC service, up to the date of the provision coming into force. Subject to parliamentary approval, this provision will remove the possibility of service users requesting refunds for fees paid for services, the benefits of which they have fairly received.

65. The impact assessment also suggests minimal costs to the private sector around familiarisation, for example for legal professionals as the change in legislation will mean that lawyers, solicitors, and other legal professionals will have to familiarise themselves with how the new legislation affects decisions during charges, court proceedings, prosecutions, convictions, and sentencing.

Other relevant considerations

66. There are likely to be both government and non-government amendments to this Bill as it progresses through Parliament as this is a contested area of policy. There may be further Legislative Consent Memoranda required where any amendments trigger the requirement for legislative consent.

Post EU scrutiny

67. The EU has the authority to establish the conditions for entry and legal residence in a Member State. Immigration is reserved to the UK Parliament. Therefore, the majority of this legislation is not relevant to the Scottish Government's policy to maintain alignment with the EU. However, the repeal of the sections 24 and 28 of the Illegal Migration Act aligns with EU law and is in accordance with the Scottish Government's policy of EU alignment.

68. Directive 2011/36/EU, and the Council of Europe Convention on Action against Trafficking in Human Beings require that assistance and support is provided to victims of human trafficking for a period of time, to allow them to begin to recover

from their experiences, and to escape the influence of traffickers. This support was not to be conditional on the victim's willingness to cooperate with a criminal investigation or prosecution of their traffickers. Sections 24 and 28 disapplied the requirements on the Scottish Ministers, under domestic law, to provide this support. Therefore the repeal of this disapplication, which intends to reinstate the obligation under domestic law, is in alignment with EU law.

69. The other devolved matters in which this Bill legislates are not relevant to the Scottish Government policy of alignment.

Conclusion

70. The Scottish Government has concluded that relevant clauses within the Bill require consent from the Scottish Parliament. The Scottish Government recommend that the Scottish Parliament consent to all clauses requiring consent as follows:

- Provision and sharing of trailer registration information (clauses 30 to 33);
- Provision of biometric information at ports in Scotland (clause 36);
- Repeal of certain provisions of the Illegal Migration Act 2023 (clause 38);
- Detention and exercise of functions pending deportation (clause 41);
- Powers to take biometric information at detention centres (clause 42);
- Offences relating to articles for use in serious crime (clauses 43 to 45);
- Applicants for making of orders and interim orders (clause 48); and
- Validation of fees charged in relation to qualifications (clause 51).

Draft motion on legislative consent

71. The draft motion, which will be lodged by the Cabinet Secretary for Social Justice is:

“That the Parliament, in relation to the Border Security, Asylum and Immigration Bill, consents to: Clauses 30-33 (Provision and sharing of trailer registration information); Clause 36 (Provision of biometric information at ports in Scotland); Clause 38 (Repeal of certain provisions of the Illegal Migration Act 2023); Clause 41 (Detention and exercise of functions pending deportation); Clause 42 (Powers to take biometric information at detention centres); Clauses 43-45 (Offences relating to articles for use in serious crime); Clause 48 (Applicants for making of orders and interim orders); and Clause 51 (Validation of fees charged in relation to qualifications) being considered by the UK Parliament.”

Scottish Government
March 2025

This Legislative Consent Memorandum relates to the Border Security, Asylum and Immigration Bill (UK legislation) and was lodged with the Scottish Parliament on 12 March 2025

Border Security, Asylum and Immigration Bill – Legislative Consent Memorandum

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