

Legislative Consent Memorandum

Immigration and Asylum Bill

Background

1. This memorandum has been lodged by Neil Gray MSP, Cabinet Secretary for Justice, in accordance with Rule 9B.3.1(a) of the Parliament's standing orders.
2. The Immigration and Asylum Bill ("the Bill") was introduced by the UK Government in the House of Commons on 30 June 2026. The Bill is available on the UK Parliament website [Immigration and Asylum Bill - Parliamentary Bills - UK Parliament](#).
3. The Bill makes provision intended to bring into effect the main reforms the UK Government announced in the [Restoring Order and Control statement](#) in November 2025.
4. UNHCR published [observations on the UK Government's Restoring Order and Control policy statement](#) (upon which the Bill was based) in December 2025. This noted that the statement set out high level policy goals and that more detail would be needed including on legislation, policy and operational guidance.
5. UNHCR has also provided [observations on UK Government proposals for a new independent appeals body](#). This sets out the international standards and core due process requirements to help inform the design and operation of that body.
6. The Scottish Government has concerns regarding the general principles of the Bill and specific elements.

Content of the Bill

7. The Bill provides for the creation of an Independent Immigration Appeals Authority (IIAA), which will initially operate alongside, then replace, the current First-tier Tribunal (Asylum and Immigration Chamber). It will determine appeals on protection and human rights claims and some immigration bail applications.
8. The Bill requires appellants to confirm whether they have obtained advice or representation, chosen to proceed without it, or were unable to secure it despite attempting to do so, including explaining the steps taken. It is unclear whether cases may be postponed where it was not possible to secure advice despite attempting to do so.

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9. The Bill also contains provisions to allow for regulations to expedite appeals where there is a public interest in doing so. No definition has been provided of cases that may be in the public interest.

10. The Bill sets out interpretations of Article 8 of the European Convention on Human Rights (ECHR) for the purpose of restricting the circumstances under which a human rights based claim to enter or remain in the UK can be made. Central to this are provisions to define and codify “family life” such that in most cases this will be understood as being limited to a ‘core cohabiting family’ of spouse/partners and parents with their minor children who live together. Where a parent does not normally live with their child who is a minor, evidence of a genuine and subsisting parental relationship will be required. The Bill does not set out how this may apply in the context of refugee family reunion. There is allowance for exceptional circumstances, however the Bill also sets out factors for assessing dependency where relationships fall outside the ‘core cohabiting family’ model. The European Court of Human Rights has followed similar reasoning in recent years, for example in [Kumari vs the Netherlands](#), by limiting Article 8’s application between parents and their adult children.

11. The provisions interpreting Article 8 also make changes to clarify that the public interest includes that people should be financially independent, not overly reliant on public services like healthcare, of good character and with no prior convictions. Provisions also introduce a statutory approach to weighting immigration status and compliance, particularly that no weight should be given to a private or family life established at a time when the person required leave to enter or remain in the UK but did not have it or in the event of a serious breach of a condition attached to their leave to enter or remain. Provisions are also amended to clarify factors that should be considered when determining whether it is in the public interest to remove the parent of a qualifying child from the UK.

12. The Bill also makes provision for stricter interpretation of Article 8 for people subject to deportation, setting out that the public interest requires deportation unless the effect would be disproportionate. This seeks to make changes to clarify the circumstances in which foreign national offenders (anyone convicted of a crime who is not a British Citizen) can be deported and the limited exclusions that might apply in exceptional circumstances.

13. The Bill makes provision across three broad areas in terms of modern slavery/human trafficking.

14. The first area involves changes to the operation of Slavery and Trafficking Prevention Orders (STPOs), the introduction of a new Slavery and Trafficking Risk Orders (STROs) on acquittal and similar changes to the operation of STROs as proposed for STPOs. These changes relate to England and Wales only, apart from a consequential amendment to the section 32(2) of the Human Trafficking and Exploitation (Scotland) Act 2015.

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15. Secondly, the Bill sets out that the Secretary of State must always be the competent authority to determine the victim status of adults. The Secretary of State is the competent authority for determining whether a child is a victim too, however, can also designate public authorities as the “competent authority” to take these decisions for child victims. The Bill also makes provision that the trafficking decision maker must consider a potential victim’s credibility undermined if the person does not disclose their trafficking experience at the first possible opportunity (any delay to this disclosure being seen as detrimental to the claim), or if there are any inaccuracies or inconsistencies in their account, or if the account is seen as strikingly similar to another. The Bill also confers powers on the Secretary of State to make regulations and issue guidance about how the victim identification regime will operate in practice. However, the Bill does not provide a role for Scottish Ministers in the exercise of these powers and does not include an explicit requirement to consult or for consent on the development of the regulations or guidance, which will ultimately determine how the policy is implemented.

16. Thirdly, the Bill reforms the Transparency in Supply Chains regime in Part 6 of the Modern Slavery Act 2015. It introduces more prescriptive reporting requirements, strengthening approval and certification arrangements, and extends the duty to publish annual slavery and human trafficking statements to public authorities meeting a specified budget threshold set by the Secretary of State. The provisions also introduce new publication and submission requirements, and establish a stronger enforcement framework, for non-compliance with duties under the regime. As drafted, the provisions will apply to Scottish public authorities exercising devolved functions and would allow key aspects of the regime, including thresholds, budget calculations, guidance and penalties, all to be determined by the Secretary of State. Much of this will be done by the use of regulation making powers. Where these exist, they do not provide for a role for the Scottish Ministers if these regulations make devolved provision.

17. The Bill makes provision to introduce the concept of ‘core protection’ to replace grants of refugee status or humanitarian protection with a single protection that is intended to be more basic and temporary. Detail of how this operates is expected to be set out in regulations. In the Restoring Order and Control policy statement, the UK Government outlined an intention to introduce a new in-country Protection Work and Study route which people will be able to switch to from ‘core protection’ if eligible. The statement indicated that this route will enable people to ‘earn’ settlement sooner than they would under ‘core protection’ and may also enable people to apply for refugee family reunion (which there will be no automatic right to under core protection). The Bill does not set out detail of this route, or other potential restrictions and obligations which may be applied to ‘core protection’ for example potential extension of No Recourse to Public Funds to this group.

18. The Bill makes amendments to the Nationality and Borders Act 2022 to interpret the Refugee Convention in relation to exceptions to the rule of non-refoulement.

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19. The Bill introduces provision to allow the Home Secretary to require people who have received asylum support, and who have had their asylum case concluded, to contribute towards those asylum support costs when they have the financial means to do so. This relates to support provided to people seeking asylum who would otherwise be destitute while waiting for a decision on their asylum application from the Home Office. The Bill exempts those who were under 18 at the time of receiving support from any charges, with further exemptions to be set out in regulations. The Bill provides for the creation of a new Home Office mechanism to recover the costs and enable regulations to provide for HMRC to collect amounts required to be paid.

Provisions which require the consent of the Scottish Parliament

20. The Scottish Government consider the legislative consent process to be engaged for: clause 25(8), clause 35 and Schedule 4, clause 36, clauses 44-49 (excluding clause 45) and Schedule 5, and paragraph 2(4) of Schedule 2. The UK Government has set out their position that legislative consent is engaged for: clause 25(8), clause 35, clauses 44-49 and Schedule 5, and paragraph 2(4) of Schedule 2. There is therefore broad agreement, however there is a lack of clarity regarding Schedule 4 and Schedule 5 which the UK Government reference as engaging legislative consent in Annex A of the [Explanatory Notes](#) on the Bill, but not in the main narrative of the notes. There is not currently agreement regarding clause 36, which the Scottish Government considers to engage legislative consent. There is also need for further clarity from the UK Government on clause 45, which it cites as requiring consent. The Scottish Government position is that it does not consider this clause to engage consent, as set out in paragraph 32 below.

Clause 25(8)

21. Clause 25 provides for a new type of STRO in England and Wales which can be imposed unilaterally by the court when a person is acquitted of a criminal offence. Clause 25(8) would make a breach of this order a criminal offence in Scotland, in line with existing trafficking orders imposed in England and Wales. The Scottish Government agrees with the UK Government that the LCM process is engaged as this legislates within the devolved competence of the Scottish Parliament by adding a breach of the new order to the existing list of orders within section 32(2) of the Human Trafficking and Exploitation (Scotland) Act 2015.

22. Officials are, however, awaiting confirmation from the UK Government that compliance with the European Convention on Human Rights (ECHR) has been considered. Given this, the Scottish Government is not in a position to make a recommendation on consent for this provision at this stage. Once further information is received from the Home Office, the Scottish Government will set out its view on consent in a supplementary LCM. As part of the Scottish Government's discussions

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with the UK Government, reassurances are being sought that the process is Article 6 ECHR compliant (in relation to civil proceedings).

Clause 35 and Schedule 4

23. Clause 35 and Schedule 4 make changes to human trafficking victim identification. The provisions relate to decision-making responsibilities, and confer powers on the Secretary of State to make wide ranging regulations, for adults or children, around the authority which can decide if a person is a victim of trafficking, and how they may decide that. This includes enabling the Secretary of State to designate public authorities as the competent authority responsible for determining whether a child is a victim of human trafficking through the National Referral Mechanism, and making the Secretary of State the sole option for decision making around adults victim status.

24. Clause 35 and Schedule 4 are legislating in a devolved area insofar as they relate to victim identification and apply to Scotland, because the identification of victims of trafficking is devolved. Clause 35 is also considered to alter the executive competence of the Scottish Ministers.

25. Clarification is needed on whether the UK Government has assessed that the legislative consent process is engaged for Schedule 4. While the territorial extent table in Annex A of the Explanatory Notes indicates that clause 35 and Schedule 4 engage the LCM process, this is not reflected clearly in the narrative in the main document. The subject matter and legislative competence of devolved legislature section, only references clause 35 and not Schedule 4 and also narrows the reference to a “child victim”. As the Scottish Government consider that Clause 35 and Schedule 4 are regarding devolved matters, insofar as they relate to identification of adult or child victims in Scotland, officials will continue to ask the Home Office to clarify their position.

26. Schedule 4 confers powers on the Secretary of State to make regulations and issue guidance about how victims are identified, without a role for the Scottish Ministers in the development of these regulations or guidance. Victim identification is a devolved matter and the powers provided for in the Bill would encroach into devolved areas such as setting out who can make trafficking decisions and the associated criteria and processes for determining who is a victim, with a direct impact on determining who is eligible to receive support as a victim. There are also elements where this will cut across existing powers of the Scottish Ministers to make regulations in this area. This would affect devolved services, including policing, local authority children's services and health services, and the Scottish Government considers that legislative consent is required.

27. The Scottish Government has concerns about the breadth of the powers conferred on the Secretary of State, particularly in relation to regulations and guidance, and the limited detail in the Bill on how the regime will operate. Accordingly, the Scottish Government is not in a position to make a recommendation

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on legislative consent at this stage. The Scottish Government will set out its position in a supplementary LCM pending further engagement with the Home Office.

Clause 36

28. Clause 36 provides that the trafficking decision maker must consider a potential victim's credibility undermined if the person does not disclose their trafficking experience at the first possible opportunity (any delay to this disclosure being seen as detrimental to the claim), or if there are any inaccuracies or inconsistency in their account, or if the account is seen as strikingly similar to another.

29. The determination of whether or not a person is a victim of trafficking is not reserved under the Scotland Act. The Scottish Ministers have pre-existing powers under the Human Trafficking and Exploitation (Scotland) Act 2015 to make provision around who the decision maker is and what processes and criteria should apply, where decisions are to be made as to who is a victim and therefore who should or may receive support.

30. Clause 36 has not been identified by the UK Government as requiring legislative consent, but the Scottish Government consider it to engage the LCM process because it is about making decisions about who is a victim of trafficking and this is not reserved under the Scotland Act 1998. However, the Scottish Government is not yet in a position to make a recommendation on legislative consent at this stage and will seek further information from the UK Government in order to set out its position in a supplementary LCM.

Clauses 44 – 49 (except clause 45) and Schedule 5

31. Clauses 44 to 49 and Schedule 5 amend Part 6 of the Modern Slavery Act 2015, which relates to Transparency in Supply Chains.

32. Clause 44 replaces the current, more flexible reporting model with a prescriptive regime requiring slavery and human trafficking statements to comply with specific content requirements, including information on operations and supply chains, risk assessment and mitigation, due diligence, training and effectiveness. It also introduces Schedule 5, which inserts Schedule 4ZA into the MSA, and gives the Secretary of State a power to amend Schedule 4ZA by regulations. This power is important because Schedule 4ZA sets out the requirements that the reporting body will be under, whether that body is a commercial organisation or a public body. There is no obligation to consult the Scottish Ministers nor to require consent from them before regulations are made in a devolved area. The consultation requirement that is in place requires the Secretary of State to consult such persons as the Secretary of State considers appropriate. Insofar as clause 44 creates a power to make regulations that place obligations on devolved public authorities, the legislative competence process is engaged.

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33. Clause 45 specifies the approval, certification and accountability requirements for slavery and human trafficking statements for commercial businesses under section 54 of the Modern Slavery Act 2015. The UK Government are of the view that clause 45 would trigger the requirement for an LCM, however, they have not provided an explanation for these views. The Scottish Government considers that although this clause would have implications for businesses in Scotland, it relates to the regulation of types of business association in the United Kingdom. It is therefore reserved and not something which would be within the legislative competence of the Scottish Parliament. It also does not seek to amend either the legislative competence of the Scottish Parliament, or the executive competence of the Scottish Ministers. Officials will be seeking further clarity from the UK Government on why it thinks the clause requires consent.

34. Clause 46 extends the reporting regime to public authorities meeting a budget threshold to be set by the Secretary of State in regulations. Public authorities within scope would be required to prepare annual slavery and human trafficking statements, capturing Scottish public authorities exercising devolved functions.

35. Clause 47 sets out the publication and submission requirements of the statements for public authorities and commercial organisations. The Secretary of State may make regulations to set out that the statement can be submitted electronically and the form of this, and for links to the statement to be provided on any website. Regulations may also be used to amend the reporting deadlines. There is no requirement to consult with or seek consent from the Scottish Ministers where the regulations apply to devolved Scottish public bodies.

36. Clause 48 allows for The Secretary of State to be able to issue guidance about duties under the new regime. This will include providing guidance to devolved Scottish public authorities.

37. Clause 49 provides the Secretary of State with a power to make regulations around an enforcement framework which includes financial penalties where a commercial organisation or public authority, without reasonable excuse, fails to comply with the duty imposed by or under Part 6. Penalties may be set at up to the higher of £1 million or 1% of turnover, or in the case of public authorities, 1% of total budget. Financial penalties would be paid into the Consolidated Fund. There is no requirement to seek consent from or consult the Scottish Ministers where these powers are to be exercised over Scottish public bodies.

38. The Scottish Government considers that legislative consent is required for these provisions because they apply to Scottish public bodies carrying out devolved functions. However, further consideration is needed regarding the scope of the powers conferred on the Secretary of State and their application to devolved public authorities, as well as around how regulation making powers for the Secretary of State will be exercised, and what input the Scottish Ministers will be able to have. As such, the Scottish Government is not in a position to make a recommendation on consent for clauses 44 to 49 (excluding clause 45) and Schedule 5 at this stage.

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Following further discussion with the Home Office, the Scottish Government position will be set out in a supplementary LCM.

Paragraph 2 of Schedule 2

39. Paragraph 2 of Schedule 2 disqualifies members of the IIAA from being elected as Members of Parliament in England, Scotland, Wales, or Northern Ireland. This does not constitute a material change to the current position under the Scottish Parliament (Disqualification) Order 2025, which already includes both 'any member of the First-tier Tribunal' (encompassing the First-tier Tribunal Immigration and Asylum Chamber, where such appeals are currently heard) and 'any member of the First-tier Tribunal for Scotland'. The amendment is therefore a necessary addition to ensure consistency with the establishment of the Independent Immigration Appeals Authority.

40. Paragraph 2(4) of Schedule 2 specifically relates to disqualifying members of the IIAA from being elected as Members of the Scottish Parliament. This is a matter within devolved competence.

41. The Scottish Government intends to recommend consent to this clause and will confirm its position in a supplementary LCM.

Reasons for not making a recommendation on consent

42. The Bill as introduced contains provisions that apply to Scotland. The majority of the Bill concerns matters relating to the reserved matter of immigration and nationality. The UK Government has set out its views on the provisions which require legislative consent in the Explanatory Notes to the Bill. The Scottish Government broadly agrees with the UK Government assessment that clause 25(8), clause 35 and Schedule 4, clauses 44-49 and Schedule 5 and paragraph 2(4) of Schedule 2 require consent of the Scottish Parliament. As noted, there is a lack of clarity in terms of Schedule 4 and Schedule 5 as set out in the UK Government's Explanatory Notes, and that the Scottish Government does not view clause 45 as engaging consent and so is seeking further information from the UK Government. The Scottish Government also considers clause 36 to require legislative consent and is discussing this with the UK Government.

43. The Scottish Government is continuing to discuss clauses 25(8), 35, 36, 44-49 and Schedules 4 and 5 with the UK Government and as a result is not in a position to make a recommendation on consent for these provisions in the Bill at this stage.

44. In terms of clause 25(8), specific information relating to compliance with Article 6 of the European Convention on Human Rights has been requested.

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45. In terms of Clause 35 and Schedule 4, further clarity is required from the UK Government as these clauses appear to be encroaching on and potentially limiting the exercise of the Scottish Ministers' existing powers set out in the Human Trafficking and Exploitation (Scotland) Act 2015. Further, Schedule 4 is assessed by the Home Office in Annex A of the explanatory notes as engaging the LCM process however this is not referenced in the main document.

46. Clause 36 has not been subject to prior discussion and the Scottish Government would wish to discuss the impact of that clause with the UK Government before coming to a view on whether or not to recommend consent.

47. Clauses 44 - 49 and Schedule 5 remain under discussion around the scope and exercise of the powers and the role of the Scottish Ministers.

48. The Scottish Government is still discussing the remaining relevant clauses with the UK Government. The Scottish Government is not in a position to make a recommendation on consent for the outstanding clauses at this time.

49. A supplementary LCM is intended to be lodged before 31 August that will set out the Scottish Government's position on the remaining clauses and provide a draft Motion on Legislative Consent.

Consultation

50. As the Bill has been drafted and introduced by the UK Government, the Scottish Government has not undertaken consultation on the Bill itself.

51. The Scottish Government did undertake an eight-week [consultation on proposals to extend Transparency in Supply Chains reporting requirements to Scottish public bodies](#) in 2022. The consultation focused on the inclusion of public bodies with a budget of £36 million or more, a single reporting deadline, mandatory reporting topics, group statements, use of a UK-wide registry, and civil penalties for non-compliance. There was broad support for extending reporting requirements to public bodies (86%), introducing a single reporting deadline (76%), and making key reporting areas mandatory.

52. While the 2022 consultation provides evidence of support for extending reporting requirements to public bodies, it did not consider several elements included in the Bill, such as the expanded financial penalty regime, payment of penalties into the Consolidated Fund, or enforcement arrangements in Scotland through the Court of Session.

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Financial implications

53. At this stage, the financial implications are uncertain and will depend on the final content of the Bill, regulations and their eventual implementation.

54. Clauses 44-49 and Schedule 5 include provisions that could impose administrative and compliance burdens on Scottish public bodies exercising devolved functions. These may include costs related to supply chain mapping and risk assessments, developing due diligence processes, staff training, and preparing and publishing annual statements.

55. The proposed financial penalty framework could also have financial implications. Regulations would allow the Secretary of State to set penalty levels and recover arrangements, including potential for penalties to be applied to Scottish public authorities. The overall impact will depend on the final design of the regime, including any exemptions, safeguards and enforcement arrangements.

Other relevant considerations

56. The Scottish Government did not have advanced sight of the final Bill and all clauses until the evening before the Bill was introduced. While there was engagement between UK Government and Scottish Government officials prior to introduction, the devolution analysis consisted of one-word assessments with no explanation or policy intention provided to clarify implications of provisions for Scotland. This has prevented the Scottish Government from being able to make recommendation on consent at this stage.

57. The UK Government's failure to provide the Scottish Government with sufficient time to fully consider legislation in advance of its publication is a serious issue that impacts on the Scottish Parliament's scrutiny of UK legislation that requires legislative consent. The Scottish Government continues to press the UK Government to ensure that the information necessary for the Scottish Government to provide to the Scottish Parliament an appropriate recommendation on legislative consent is shared timeously in the future.

Post EU scrutiny

58. The Bill sets out appeals that are to be heard by the IAA including appeals under the Immigration (European Economic Area) Regulations 2016 (S.I. 2016/1052) as they continue to have effect following their revocation, and under the Immigration (Citizen's Rights Appeals) (EU Exit) Regulations 2020 (S.I. 2020/61).

59. The 2020 Regulations established, from exit day, a right of appeal for EU, other European Economic Area (EEA) and Swiss citizens and their family members against decisions affecting their entitlement to enter and remain in the UK under the

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EU Settlement Scheme (EUSS) or decisions in relation to EUSS family permits or travel permits.

Conclusion

60. While the Scottish Government intend to recommend consent in relation to paragraph 2(4), Schedule 2, of the Bill, discussions are still ongoing with the UK Government with regard to the other relevant provisions in the Bill. As such, the Scottish Government does not, at this stage, intend to lodge a Motion on Legislative Consent.

61. The Scottish Government intends to lodge a supplementary LCM before 31 August, which will set out the Scottish Government recommendation on consent for all the relevant provisions of the Bill.

Scottish Government
July 2026

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