This Supplementary Legislative Consent Memorandum relates to the Immigration and Asylum Bill (UK Parliament legislation) and was lodged with the Scottish Parliament on 19 November 2026

Supplementary 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) and (c) of the Parliament's Standing Orders. It should be read in conjunction with the Scottish Government's previous memorandum on the Immigration and Asylum Bill, the original LCM (LCM-S7-9).

2. The Immigration and Asylum 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 via this link: Immigration and Asylum Bill - Parliamentary Bills - UK Parliament.

Content of the Bill

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. The Bill covers: the establishment of a new Independent Immigration Appeals Authority (IIAA); tightening the interpretation of Article 8 of the European Convention on Human Rights; changes to Modern Slavery legislative framework to set out Government obligations; expansion and strengthening of the existing transparency in supply chains framework; new law enforcement measures to tackle exploitation; embedding provisions to localise decision-making in the National Referral Mechanism for children; the introduction of 'core protection' for people granted refugee status or humanitarian protection following an asylum application; and establishing a mechanism to recover asylum accommodation and support costs from people who received them. Please refer to the Scottish Government's original LCM on the Bill for a more detailed overview of the content of the Bill at introduction.

4. The UK Government has tabled amendments to the Bill, including the introduction of new clauses as well as technical amendments to the Bill as introduced. The UK Government amendments relate to: the Independent Immigration Appeals Authority (IIAA) which is being established under the Bill; Article 8 of the European Convention on Human Rights (ECHR); definition of a protection claim and protection status, as well as consequential amendments to previous legislation to reflect the new definitions; asylum support payment contribution recovery; modern slavery/human trafficking; and other general and technical amendments.

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Provisions which require the consent of the Scottish Parliament

5. The Scottish Government view remains that the clauses set out in LCM-S7-9 require consent, to note that clause numbering in the Bill as amended by Committee differs from clause numbering in the Bill as introduced. In addition, since the original LCM was lodged further analysis has identified clause 38 in the Bill as introduced (now clause 43) as relevant because of its potential impact on devolved areas. The UK Government has also tabled amendments at committee and report stages. The UK Government's view was that all its amendments at committee stage were reserved; the Scottish Government disagreed with this view for one amendment, amendment 31 (now clause 12) which the Scottish Government considers to require consent. Of the UK Government amendments at report stage, one has been identified and agreed by both the UK and Scottish Governments as requiring consent: amendment 19.

6. Amendment 19 relates to clause 47 (now clause 53); the clause was identified as relevant in the original LCM and is covered in this supplementary LCM. The UK Government has agreed that amendment 19, relating to clause 53 engages the LCM process insofar as it relates to obligations on public authorities; and consider all other amendments at report stage to be reserved. This view is shared by the Scottish Government.

7. The UK Government devolution analysis at point of introduction indicated that clause 25(8) (now clause 30(8)), clause 35 (now clause 40), clauses 44-49 (now clauses 50-55) and Schedule 4 (now Schedule 5), and paragraph 2(4) of Schedule 2 were provisions which engaged LCM processes for Scotland; which the Scottish Government agreed and set out in the original LCM. The UK Government have changed their position in relation to clause 35 and Schedule 4 (now clause 40 and Schedule 5) and no longer consider these to require consent; the Scottish Government still considers these clauses to require consent. They also now agree that clause 45 (now clause 51) does not require consent and indicated that their original analysis was that clauses 44-49 (now clauses 50-55) engaged consent "insofar as they relate to obligations on public authorities" and therefore did not include clause 45 (now clause 51). The UK Government view is that consent is not a requirement for clauses 36 and 38 (now clauses 41 and 43).

8. In summary, the Scottish Government's view is that clauses 12, 30(8), 40, 41, 43, 50, 52, 53, 54, 55, and paragraph 2(4) of Schedule 2, Schedules 5 and 6, and amendment 19 engage the consent of the Scottish Parliament. The UK Government's view is that clauses 30(8), 50, 52, 53, 54, 55, paragraph 2(4) of Schedule 2 and amendment 19 engage legislative consent. There is therefore disagreement on whether clauses 12, 35, 40, 41 and 43 and Schedules 5 and 6 engage consent.

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Clause 12 (introduced as amendment 31)

9. Clause 12 of the Bill as amended by Committee, creates a power for the Secretary of States to take such steps as they consider appropriate to increase the general availability of IIAA advice and representation. Such steps may include (but are not limited to) providing financial and other assistance (which may be subject to conditions) to those providing education, training or accreditation, and those who provide advice and representation. Those providing such advice and representation include solicitors and advocates. The regulation, including education, training and accreditation, of solicitors and advocates is a devolved matter which is operated by the Law Society of Scotland and Faculty of Advocates, with oversight of the Lord President of the Court of Session.

10. As currently worded, clause 12 focuses on the provision of financial assistance but in practice creates a broader power for the Secretary of State to take steps which could interfere with the regulation of legal practitioners in Scotland with no role for the Scottish Ministers or those responsible for the regulation of solicitors and advocates in Scotland.

11. The Scottish Government's position is that consent is required for clause 12 as it relates to the devolved matter of the regulation of legal services. Discussions with UK Government officials indicate an intention to focus on the provision of financial assistance to support the availability of legal services in England and Wales. However clause 12 is broadly framed which has the practical effect of creating a power for the Secretary of State to take steps in relation to the regulation of legal services practitioners in Scotland.

12. The Scottish Government considers that there would be value in further consideration of this clause to ensure that it operates appropriately within Scotland's distinct legal and regulatory framework. Recommendation is therefore not to consent because the Bill as currently drafted provides a broad power which would allow for measures impacting in the devolved area of regulation of legal services practitioners.

Clause 30(8) (Clause 25(8) in the Bill as introduced)

13. Clause 30(8) amends section 32 of the Human Trafficking and Exploitation (Scotland) Act 2015 (the "2015 Act") to add a new type of risk order, risk orders on acquittal, to the list of orders a breach of which is a criminal offence in Scotland. Criminal offences around trafficking are not a reserved matter, and the 2015 Act contains provision that would allow this amendment to be made by SSI.

14. Both the UK and Scottish Government agree that this clause requires consent 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. The Scottish Government requested the ECHR analysis of this clause and upon receipt, the Scottish Government is content that the clause is ECHR compatible.

15. There is clear benefit from breaches of trafficking orders being an offence in Scotland to ensure there is no gap in enforcement capability across the UK. It is a relatively minor amendment and it can be achieved more efficiently via the LCM process than if it were done via a SSI. As such, the Scottish Government recommends that consent is provided for the UK Government to add a breach of the new order to the existing list of orders at section 32 of the 2015 Act.

Clause 40 and Schedule 5 (Clause 35, and Schedule 4 in the Bill as introduced)

16. Clause 40 and Schedule 5 relate to adult and child victim identification and support, including setting out that the competent authority for trafficking decisions is the Secretary of State and allowing for the nomination of another public authority to be the competent authority in the case of child victims (under 18s). 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 confers powers on the Secretary of State to make regulations and issue guidance about how the victim identification regime will operate in practice.

17. The Scottish Government's position on legislative consent requirements for clause 40 and Schedule 5 is that legislative consent is required. Clause 40 and Schedule 5 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 40 is also considered by the Scottish Government to alter the executive competence of the Scottish Ministers.

18. The UK Government originally shared the view that legislative consent is required at the time when the first LCM was lodged on 14 July. Since then, the Home Office has revised its devolution analysis in relation to clause 40 and Schedule 5 and it does not now consider that the LCM process is engaged for these provisions. The reasons given are that clause 40 and Schedule 5 do not alter the executive competence of the Scottish Ministers because they do not prevent the Scottish Ministers from creating their own regime using regulation making powers in the Human Trafficking and Exploitation (Scotland) Act 2015 ("the 2015 Act"). One of the main justifications given for this is that the changes apply to decisions made by a competent authority. The competent authority is only defined in the Bill for the purposes of Part 5 of the Nationality and Borders Act 2022 ("the 2022 Act"), so the decision maker and processes for a decision maker could be different for legislative processes outside of the 2022 Act. The UK Government also say they are predominantly being made for an immigration purpose.

19. However, the issue with this approach is that the UK Government have also said that unless a devolved framework is created, the framework under this Bill will apply to decisions being made for support purposes too. Therefore the Scottish Government consider the provision is in fact being made for multiple purposes, one of which is

devolved (support provision). In addition, decisions about victim status for the purpose of support provision must, under the 2015 Act be made by a Competent Authority of the UK. This Bill will make the Secretary of State the only Competent Authority for the UK, which means that decisions on victim status for devolved reasons must be made by the Secretary of State.

20. The Scottish Government also considers that, given this has been possible across the legislative landscape relating to human trafficking thus far, it would be possible to legislate in such a manner as to only impact immigration decision making under this legislation.

21. One of the policy intentions behind clause 40 and Schedule 5 in relation to children is to place the Home Office-led Pilot, in operation since 2021, on a statutory footing. The Scottish Government recognises the benefits of greater localised decision making within the National Referral Mechanism (NRM) for children, as demonstrated by the success of the pilot sites in Glasgow and Edinburgh. However, experience from the Scottish pilot sites in Glasgow and Edinburgh has also highlighted differences between Home Office expectations and operational practice in Scotland. For example, safeguarding partners have been asked to depart from established child protection processes and guidance, such as approaches to the involvement of children and families in multi-agency meetings.

22. In relation to children, the Scottish Government's position is that the proposals in clause 40 and Schedule 5 could impact how agencies exercise their devolved safeguarding and child protection responsibilities. The breadth of the powers being conferred on the Secretary of State to make regulations and issue guidance will determine how the policy operates in Scotland, with the absence of any formal role for Scottish Ministers. The Home Office's position is that these provisions are reserved. The Scottish Government considers there is a clear tension in a policy that relies on local safeguarding partners to identify victims in exercising their devolved functions, while the Secretary of State retains the power to direct how they exercise them.

23. In addition, the Scottish Government's concern is that the proposals in clause 40 and Schedule 5 have a practical impact regarding access to trafficking victim support in Scotland in general. There are further concerns in relation to Schedule 5. Schedule 5 inserts section 65B into Part 5 of the Nationality and Borders Act 2022. Section 65B does not limit the power to make regulations about reasonable or conclusive grounds decisions to decisions being made by a competent authority under Part 5 of the 2022 Act. it is a wider power, that could be used to make provision around decision making by any person. It is wide enough to be used to create processes around decision making for support reasons. Identification of victims is not a reserved matter, and legislation that will be used as criteria for victim identification with the intention of deciding who should receive support could be made by the Scottish Parliament.

24. The Scottish Government therefore recommends withholding consent to these clauses.

Clause 41 and Clause 43 (Clause 36 and 38 in the Bill as introduced)

25. Clause 41 mandates that the person who is making decisions about who is a victim of trafficking considers that any delay in reporting they are a victim, inaccuracy or omission in their account, or striking similarity to another account must be taken by the decision maker as detrimental to their credibility.

26. Clause 43 also extends the types of protection from which the person is disqualified to include the identification process for potential victims. Where the Secretary of State determines that a person is disqualified on public order grounds, no conclusive grounds decision may be made in respect of the person. Where the Secretary of State determines that a person is disqualified on grounds of bad faith no reasonable grounds or conclusive grounds decisions may be made in respect of the person.

27. The Home Office does not consider the LCM process is engaged for clauses 41 and 43 as they consider these clauses to pertain purely to immigration matters which are reserved.

28. The Scottish Government's position for these two clauses is that legislative consent is required. Identification of victims is not a reserved matter, and legislation that will be used as criteria for victim identification with the intention of deciding who should receive support could be made by the Scottish Parliament, unless the Scottish Ministers make regulations to create a Scottish decision making process. In addition, these clauses could potentially negatively affect Scottish Ministers' ability to fulfil their obligations under the Europe Convention on Action against Trafficking in Human Beings ("ECAT").

29. Clauses 41 and 43 contain provision about decision making that is intended to be used as the framework for decision making for support purposes as well as immigration purposes. This would suggest that such provision is in fact being made for a support purpose, insofar as it relates to elements about decisions on victim status, in addition to immigration decision making. It is possible to keep the support and immigration frameworks separate in legislation, as has been the case thus far by containing elements about victim status decision making in guidance as opposed to in the 2022 Act.

30. Unless the Home Office propose amendments to set out that clauses 41 and 43 only apply to immigration decisions, these provisions could be used to inform decisions about who is or is not a victim of trafficking with associated implications for accessing support which is a devolved function.

31. The Scottish Government therefore recommends withholding consent to these clauses.

Clauses 50, 52-55 and Schedule 6 (Clauses 44, 46-49 and Schedule 5 in the Bill as introduced) [Transparency in Supply Chains - TISC clauses]

32. These clauses introduce more prescriptive reporting requirements, strengthening approval and certification arrangements, and extend the duty to publish annual slavery and human trafficking statements to public bodies meeting a specified budget threshold set by the Secretary of State. The provisions also introduce new publication and submission requirements, and establish a financial penalty framework for non-compliance with duties under the regime. The provisions will apply to Scottish public bodies exercising devolved functions and would allow key aspects of the regime, including thresholds, budget calculations, guidance and financial penalties, all to be determined solely by the Secretary of State.

33. Both the Scottish Government and the UK Government agree that these provisions legislate in a devolved area. These clauses make provision on slavery and human trafficking statements by extending reporting obligations to public bodies. 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 financial penalties to be determined solely by the Secretary of State. This engages legislative consent because it is legislating in a devolved area insofar as it relates to Scottish public bodies.

34. While in principle, the strengthening of TISC legislation in Scotland is welcomed, the Bill does not provide the Scottish Ministers with any role in making regulations in devolved areas affecting the devolved Scottish public bodies that would be caught by the new requirements. As currently worded, the Bill gives the Secretary of State complete control over reporting requirements, guidance, and enforcement – including fining of devolved public bodies or raising court actions against them. In addition, report stage amendment Gov 19 inserts a new subsection into clause 53 stating that the Secretary of State may publish any slavery and human trafficking statement submitted by public authorities and other entities, as required under that clause. No express requirement to either consult with or seek the Scottish Ministers' consent is included and there are no powers provided for the Scottish Ministers to make regulations where these relate to devolved matters. A requirement to consult persons whom the Secretary of State considers appropriate before making the regulations does not guarantee a role for the Scottish Ministers. Some of the regulation making powers in the TISC clauses contain no requirement to consult at all, even limited to those whom the Secretary of State considers appropriate. This is considered to be inappropriate where provision is accepted to being made in a devolved area.

35. The Scottish Government's original LCM identified these clauses as requiring consent where they affect devolved Scottish public bodies, but reserved a recommendation pending further discussion with the UK Government. These further discussions clarified that the UK Government does not consider it appropriate for a consent requirement in respect of the exercise of these regulation making powers to be included in the Bill. The reasons provided are concern that a consent provision could

impact the process of developing and amending the regulations and could potentially fragment the UK-wide public sector TISC approach. The Scottish Government therefore recommend withholding consent for the reasons set out in paragraph 34.

Paragraph 2(4) of Schedule 2 (as introduced and as amended by Committee)

36. As set out in the original LCM, paragraph 2 of Schedule 2 disqualifies members of the Independent Immigration Appeals Authority (IIAA) from being elected as Members of Parliament in England, Scotland, Wales or Northern Ireland. This is not a material change to the current position under the Scottish Parliament (Disqualification) Order 2025 in relation to the First-tier Tribunal. The amendment is therefore a necessary addition to ensure consistency with the establishment of the IIAA.

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

38. The Scottish Government and UK Government agree that consent processes are engaged. It is a relatively minor change to ensure consistency with the establishment of the new IIAA and it can be achieved more efficiently via the LCM process than if it were done via an SSI. The Scottish Government recommends consent to this clause.

Reasons for not recommending/recommending legislative consent

39. The Scottish Government recommends that consent is withheld in relation to clauses 12, 40, 41, 43 and Schedule 5 and clauses 50, 52-55 and Schedule 6.

40. Consent to clauses 40, 41, 43 and Schedule 5 would mean that access to trafficking victim support for adults is likely to be negatively impacted resulting in a diminished ability for the Scottish Ministers to support adult victims of trafficking. While the Scottish Government supports the policy objective of clause 40 as it relates to devolving decision making for children within the NRM to local safeguarding partners, it recommends withholding consent because the provision confers broad powers on the Secretary of State to place duties on safeguarding agencies in Scotland when carrying out devolved functions, while giving no role to the Scottish Ministers or the Scottish Parliament.

41. Consenting to clauses 50, 52-55 and Schedule 6 as drafted would accept UK Ministerial control over duties placed on Scottish public bodies exercising devolved functions. They give UK Ministers (and only UK Ministers) powers to act in devolved areas, without any statutory role for the Scottish Ministers powers to act in devolved areas. If the Home Office were to amend these provisions to include consent requirements for the Scottish Ministers, the Scottish Government would consider

recommending consenting to the TISC clauses subject to analysis of amendments. Concerns about the operation of the financial penalty regime would need to be resolved as well before such a recommendation could be made.

42. Consent to clause 12 in its current form would create a power for the Secretary of State to make funding and policy decisions which could affect the devolved area of legal services regulation in Scotland, including the education, training and accreditation of solicitors and advocates. The power is not subject to a requirement for consent of the Scottish Ministers or involvement of the Scottish Ministers or the Lord President who has oversight of legal services regulation. Given the potential for the power to be exercised in areas of devolved competence, the Scottish Government does not currently consider it appropriate to recommend consent in its current form.

43. Consent is recommended for clause 30(8) and paragraph 2(4) of Schedule 2. Clause 30(8) is recommended because of a clear benefit from breaches of trafficking orders being an offence in Scotland to ensure there is no gap in enforcement capability across the UK. Paragraph 2(4) of Schedule 2 ensures consistency with the establishment of the new IIAA for the purposes of disqualification of members of the IIAA from being elected to the Scottish Parliament. These provisions are relatively minor and can be achieved more efficiently via the LCM process than if done by SSI.

Consultation

44. Following lodging of the original LCM, the Scottish Government undertook two consultations with partner organisations to understand better their views on the relevant provisions in the Bill. The Scottish Government met with child trafficking partners on the 4 August and with human trafficking partners and stakeholders on the 26 August. The Scottish Government is also aware that stakeholders who attended these meetings and other Scottish stakeholders responded to the Call for Evidence to the Bill Committee.

45. The views expressed in these meetings made it clear that there are grave concerns about the negative impact that the provisions – as they currently stand – may have on trafficking victims. Stakeholders and people with lived experience expressed, amongst other concerns, that the provisions may have a ‘chilling effect’ on victims coming forward to enter into the National Referral Mechanism, potentially leaving victims in situations of vulnerability and exploitation. They also expressed concern that several of the provisions will weaken the protection and support currently afforded to victims. The Scottish Government shares these concerns of stakeholders, especially in relation to clauses 41 and 43 which have the potential to restrict access to or disqualify from support victims of trafficking.

46. Engagement is ongoing with Home Office officials. However, the devolution analysis and responses to questions from the Home Office was delayed, and in one instance reversed (in relation to clause 40 and Schedule 5); slowing down the consideration processes and consequently reducing time available for the Scottish Parliament to be able to consider.

Financial implications

47. Financial implications of the Bill remain uncertain and will depend on the final content of the Bill, regulations and their eventual implementation.

48. As set out in the original LCM, there are potential costs for Scottish public bodies associated with provisions set out under clauses 50-55, which could impose administrative and compliance burdens. These may include costs related to supply chain mapping and risk assessments, developing due diligence processes, staff training, and preparing and publishing annual statements. The proposed financial penalty framework could also create pressures; the overall impact will depend on the final design of the financial penalty framework, including any exemptions, safeguards, and enforcement arrangements.

Other relevant considerations

49. Engagement with the UK Government continues. Whilst the present recommendation to Parliament based on the current content of the Bill is that Parliament does not consent to clauses 12, 40, 41, 43, 50, 52-55, and Schedules 5 and 6, the Scottish Government's view of the Bill could change if appropriate amendments were to be made.

Post EU scrutiny

50. The Bill sets out appeals that are to be heard by the IIAA 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).

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

Conclusion

52. The Scottish Government recommends that the Scottish Parliament agrees to consent to clause 30(8) and paragraph 2(4) of Schedule 2.

53. The Scottish Government recommends that the Scottish Parliament refuses consent in relation to clauses 12, 40, 41, 43 and Schedule 5, clauses 50, 52-55 and Schedule 6.

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Draft motion on legislative consent

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

> "That the Parliament, noting that the Immigration and Asylum Bill, introduced in the House of Commons on 30 June 2026, makes provision that fall within the legislative competence of the Parliament and alters the legislative competence of the Parliament as well as altering the executive competence of the Scottish Ministers, agrees to give consent to such provision as is made by clause 30(8) and Paragraph 2(4) of Schedule 2; and agrees to refuse consent to such provision as is made by clauses 12, 40, 41, 43 and Schedule 5, clauses 50, 52-55 and Schedule 6."

Scottish Government
November 2026

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