

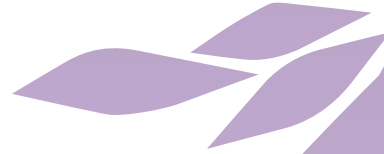


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Equalities, Human Rights and Civil Justice Committee

Equalities, Human Rights and Civil Justice Committee Report on the Legislative Consent Memorandum (LCM) on the Border Security, Asylum and Immigration Bill



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Equalities, Human Rights and Civil Justice Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- a. matters relating to equal opportunities, and upon the observance of equal opportunities within the Parliament; and
- b. matters relating to human rights.
- c. matters relating to civil justice within the responsibility of the Cabinet Secretary for Justice and Home Affairs.

2. In these Rules

(a) “equal opportunities” includes the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds or on grounds of disability, age, sexual orientation, language or social origin or of other personal attributes, including beliefs or opinions such as religious beliefs or political opinions; and

(b) “human rights” includes Convention rights (within the meaning of section 1 of the Human Rights Act 1998) and other human rights as for example contained in any international convention, treaty or other international instrument ratified by the United Kingdom.

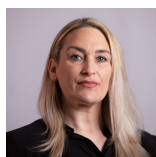


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Introduction

1. The Border Security, Asylum and Immigration Bill (the Bill) was introduced in the House of Commons on 30 January 2025. The Explanatory Notes set out that the objective of the Bill is to:
 - ” ...improve UK border security and strengthen the asylum and immigration system by creating a framework of new and enhanced powers and offences that, when taken together, 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.
2. On 12 March 2025 the Cabinet Secretary for Social Justice lodged a [legislative consent memorandum](#) (LCM) explaining why the Scottish Government considers that the Scottish Parliament should consent to the UK Parliament legislating for the relevant provisions in the Bill.
3. The draft legislative consent motion seeks the Scottish Parliament's consent to the UK Parliament legislating for : 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.
4. The LCM was referred to the Equalities, Human Rights and Civil Justice Committee and it is incumbent on the Committee to report to Parliament on it to inform Parliament's decision on whether or not to consent to the relevant provisions in this Bill being considered by the UK Parliament.

The Bill

5. The Bill primarily relates to law enforcement. It would expand the powers and capabilities of the police and other agencies, in relation to both immigration offences specifically and serious crime more generally.
6. These changes include new criminal offences of supplying or handling almost any item to be used in connection with illegal immigration, and of collecting information to be used for arranging an unauthorised journey to the UK.
7. There would also be a new offence of endangering another person during an illegal crossing in the English Channel. This is to discourage dangerous behaviour, like refusing assistance when a person aboard is hurt, but migrants' rights groups have criticised the new offence for criminalising migrants rather than people smugglers.
8. Immigration officers and police would get new powers to seize unauthorised migrants' mobile phones or other electronic devices if they suspect they contain information about organised immigration crime. They would also get easier access to HMRC customs data to help build up intelligence.
9. The Bill would make the post of Border Security Commander a statutory role. It does not articulate detailed functions for the role but does assign it certain duties.
10. The Bill would also repeal most of the Illegal Migration Act 2023, and the Safety of Rwanda (Asylum and Immigration Act) 2024 in its entirety.

The LCM

11. The LCM provides an overview of the Bill and sets out the provisions for which the Scottish Government considers consent is required from the Scottish Parliament. These do not all align with the UK Government's view of where consent should be sought. An explanation of the provisions is set out below. The references are to the clauses as introduced.

12. **Clauses 30 to 33 (trailer registration information)**

These Clauses are concerned with sharing of trailer registration information for law enforcement purposes, human welfare purposes, and specified purposes relating to policing. A trailer is an extra carrier that attaches to a truck. It does not have an engine, but does have wheels and so must be attached to a HGV (Heavy Goods Vehicle) that has an engine, for it to be functional. The relevant information will have been obtained and retained in connection with reserved functions relating to road traffic. The LCM states:

” “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.”

13. **Clause 36 (biometric data of persons)**

Clause 36 is only relevant to Scotland. It creates a new power to enable the biometric data of persons detained in Scotland to be taken at ports. This will bring 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. The UK Government has not sought consent on this clause, but the Scottish Government consider it triggers the requirement for an LCM because it says the provision has a dual purpose. The purpose of the clause is reserved as it is focused on counter-terrorism, however “...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).”

14. **Clause 38 (repealing the Illegal Migration Act 2023 provisions)**

Clause 38 repeals sections 24 and 28 of the Illegal Migration Act 2023. These disapplied specified powers and duties of the Scottish Ministers in the Human Trafficking and Exploitation (Scotland) Act 2015 (“the 2015 Act”).

15. **Clause 41 (detention and exercise of functions pending deportation)**

This will provide a power to the Secretary of State to authorise detention of a person while they consider whether:

- to make a deportation order against the person, or
- the person is a person to whom deportation of foreign criminals applies, under

the UK Borders Act 2007.

16. Clause 42 (biometrics)

This clause will expand the list of persons authorised to take fingerprints from people with particular types of immigration status at detention centres in Scotland.

17. Clauses 43 to 45 (possession of, or, making a relevant article)

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.

18. Clause 48 – (Serious Crime Prevention Order)

An SPCO (Serious Crime Prevention Order) is a court order which can be sought if a person has been convicted of a serious offence. It is used to protect the public by preventing, restricting or disrupting a person’s involvement in a serious crime. Clause 48 makes no changes to the individuals in Scotland who can apply for a SCPO – the Lord Advocate or the Chief Constable of the Police Service of Scotland. However, it will replace the existing section 8 of the Serious Crime Act 2007, and the Scottish Government says that this “therefore engages the legislative consent process.”

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

Clause 51 establishes a retrospective power for the charging of fees for services related to the “comparability, recognition or assessment of qualifications obtained outside and within the UK”, in connection with the European Network of Information Centres (ENIC) services.

Overview of the Committee's scrutiny

20. When the Committee considered its approach to the LCM it noted the limited extent of concerns about the provisions of the Bill as contained in the LCM and accordingly agreed not to take oral evidence in the first instance. However, the Committee agreed to seek written views on the LCM to ensure that it had given key stakeholders the opportunity to comment on the provisions of the Bill contained in the LCM. Specifically, the Committee agreed to seek written views from:
- Scottish Refugee Council
 - JustRight Scotland
 - Children and Young People's Commissioner for Scotland
 - COSLA
 - Police Scotland
21. Responses were received from [the Scottish Refugee Council](#), [COSLA](#) and [Police Scotland](#).
22. Both COSLA and the Scottish Refugee Council expressed concern about clause 36 (as introduced), which relates to the provision of biometric data. COSLA noted concerns about the pressure being applied to Unaccompanied Asylum Seeking Children (UASC) to sign statements declaring themselves to be adults. COSLA argued that any changes to this process should be developed in partnership with local authorities to ensure that the introduction of new processes do not adversely affect vulnerable UASC in Scotland.
23. The Scottish Refugee Council's concerns about clause 36 were more fundamental. It indicated its opposition to migration being treated as a national security issue and recommended that the Scottish Parliament should not give its consent to the UK Parliament legislating in relation to this provision, although it should be recognised that consent has not been sought.
24. At the same time, Police Scotland, indicated that these new provisions would "...reduce travel times / costs and be fairer to persons subject to biometric procedures."
25. The Committee notes the concerns expressed about clause 36. The Committee would welcome reassurance from the Scottish Government that it is working with the UK Government to ensure this new process does not adversely affect vulnerable UASC in Scotland.
26. In addition, one member of the Committee (Maggie Chapman MSP) highlighted the evidence from the Scottish Refugee Council raising concerns about the fact that the Bill does not repeal clause 29 of the Illegal Migration Act 2023. The Scottish Refugee Council noted that the effect of clause 29 is to effectively disqualify individuals from protections where they are identified as potential victims of modern

slavery or trafficking if they are deemed a "threat to public order" or have made claims in "bad faith."

27. Mindful of the evidence presented by the Scottish Refugee Council, the member wished to highlight her concerns that the clause has not been repealed in this Bill.

Delegated Powers and Law Reform Committee scrutiny

28. The Delegated Powers and Law Reform Committee of the Scottish Parliament has also considered the LCM and reported on [29 April 2025](#).
29. With reference to the power under Clause 46(3) (referred to as clauses 43 to 45 in the Scottish Government's LCM) the Delegated Powers and Law Reform Committee suggested that the lead committee should seek a commitment from the Scottish Government that it will keep that committee informed about consultation in relation to any regulations made under the power.
30. This Committee [wrote to the Cabinet Secretary for Social Justice](#) seeking this commitment.
31. The Committee welcomes the Cabinet Secretary's commitment to keeping it updated in [her response](#).

Conclusions and recommendations

32. The Committee recommends that the Scottish Parliament consents to the UK Parliament legislating for the relevant provisions in this Bill.
33. The Committee notes, however, stakeholders' concerns about clause 36, as introduced. As noted earlier, the Committee would welcome reassurance from the Scottish Government that it is working with the UK Government to ensure this new process does not adversely affect vulnerable UASC in Scotland.

