

The Welsh Government's Legislative Consent Memorandum on the Border Security, Asylum and Immigration Bill

May 2025



1. Background

1. The Border Security, Asylum and Immigration Bill¹ (the Bill) was introduced into the House of Commons and had its first reading on 30 January 2025. It is sponsored by the Home Office.
2. The Explanatory Notes to the Bill as introduced state:

"The Bill establishes the architecture and provides the tools, powers and offences to transform the cross-system response to the threats against UK border security and strengthen the operation of the border security, asylum and immigration systems.

The purpose 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.

While the measures within the Bill enable a response to the range of current and future threats to the UK border, the intention in the immediate term is to support the Border Security Command's focus on preventing, investigating and prosecuting Organised Immigration Crime(OIC), providing additional deterrents and penalties for criminals involved in such activity. The Bill will:

- a. enable smarter, faster and more effective interventions to protect UK border security;*
- b. make it easier to detect, disrupt and deter those seeking to engage in and benefit from OIC, limiting the permissible environment and its impact; and*
- c. improve understanding of how and why OIC happens."*²

¹ ~~The Border Security, Asylum and Immigration Bill~~, as introduced

² ~~Explanatory Notes~~ to the Border Security, Asylum and Immigration Bill, as introduced

3. The long title to the Bill states that it is a Bill to:

“... make provision about border security; to make provision about immigration and asylum; to make provision about sharing customs data and trailer registration data; to make provision about articles for use in serious crime; to make provision about serious crime prevention orders; to make provision about fees paid in connection with the recognition, comparability or assessment of qualifications; and for connected purposes.”³

4. Committee stage was completed in the House of Commons on 18 March 2025. At the time this report was agreed, a date for Report stage was yet to be announced.

The Welsh Government's Legislative Consent Memorandum

5. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant Bill before the UK Parliament makes provision in relation to Wales that has regard to devolved matters.

6. On 17 February 2025, Jane Hutt MS, the Cabinet Secretary for Social Justice, Trefnydd and Chief Whip (the Cabinet Secretary), laid before the Senedd a Legislative Consent Memorandum in respect of the Bill (the Memorandum).⁴

7. In paragraph 7 of the Memorandum the Cabinet Secretary states:

“It has not been possible to comply with the two week requirement to lay a memorandum (Standing Order 29.2) as Welsh Government officials were not able to consider clauses before introduction of the Bill (with the exception of clause 51 which UK Government had already identified as needing Senedd consent).”

8. The Business Committee agreed that the Legislation, Justice and Constitution Committee, the Children, Young People and Education Committee,

³ The Border Security, Asylum and Immigration Bill, as introduced, page 1

⁴ Welsh Government, Legislative Consent Memorandum on the Border Security, Asylum and Immigration Bill, February 2025

the Equality and Social Justice Committee and the Local Government and Housing Committee should report on the Memorandum by 2 May 2025.⁵

Provisions for the which the Senedd's consent is required

9. The Welsh Government's assessment is that consent is required for clause 38 (Repeal of certain provisions of the *Illegal Migration Act 2023*), and clause 51 (Validation of fees charged in relation to qualifications) of the Bill as introduced (clause 38 and clause 53 of the Bill as amended in Public Bill Committee⁶).

10. In relation to clause 38, in the Memorandum the Cabinet Secretary states:

"... this Memorandum is concerned with the specific repeal of sections 4, 20, 21, 57 and 58 (as captured in clause 38(1)(a), 38(1)(d) and 38(1)(f)) as these relate to legislation directing the treatment of unaccompanied children who may be in Welsh local authority care.

Section 4 of the Illegal Migration Act 2023 ("the 2023 Act") conferred a power on the UK Secretary of State to make exemptions from the duty to remove individuals from the UK. Related regulations could include consequential amendments to Measures or Acts of Senedd Cymru.

Section 20 of the 2023 Act allowed the UK Secretary of State to extend clauses relating to the accommodation of unaccompanied migrant children to Wales. Section 21 enabled the transfer of unaccompanied migrant children between local authorities, including potentially out of Welsh local authority care. Sections 20 and 21 would have had an impact on devolved social care and local authorities' functions.

Section 57 prevented appeals to the outcome of a so-called scientific method of age assessment. Section 58 gave the UK Secretary of State the power to make regulations regarding the refusal of a scientific age assessment. These provisions would have had an effect on the function of Welsh local authorities and other devolved authorities providing care and support to

⁵ Business Committee, Timetable for consideration: Legislative Consent Memorandum on the Border Security, Asylum and Immigration Bill, February 2025

⁶ The Border Security, Asylum and Immigration Bill, as amended in Public Bill Committee

children under the Social Services and Well-being (Wales) Act 2014.

The five sections detailed above would be repealed by commencement of clause 38 under the Bill. The five sections were subject to a previous Legislative Consent Memorandum and Supplementary Legislative Consent Memorandum during the passage of the Illegal Migration Bill. In both cases, Senedd Cymru voted to withhold consent for UK Ministers to legislate. Nevertheless, the provisions remained in the Illegal Migration Bill as it became the 2023 Act.”⁷

11. With regards to clause 51 of the Bill as introduced, the Cabinet Secretary states:

“Clause 51 provides retrospective statutory authority for fees charged in connection with the following three services provided by a third-party supplier on behalf of the Home Office and the Department for Education (DfE):

(i) The Home Office Visas and Nationality Service

(ii) The DfE UK European Network of Information Centres Services (the UK ENIC Service)

(iii) The non-UK Early Years Qualifications Recognition Service

The provision provides that where the conditions set out in the clause are met, a person to which this clause applies (i.e. the Secretary of State or a person other than the Secretary of State who charged the relevant fee pursuant to arrangements between that person and the Secretary of State) is taken to have had the power to charge fees for services. (...)

During a recent re-procurement exercise undertaken by the UK Government, it was identified that there is a lack of statutory authority for the fees charged for the Home Office Visas and Nationality service and the DfE Early Years service. DfE considers the UK ENIC services to be ‘commercial’ and not requiring statutory authority. However, DfE has concluded that there is a legitimate alternative analysis. As such, it has been

⁷ Memorandum, paragraphs 14 to 18

decided to make statutory provision for charging for relevant services, and to include them within the Bill.

The UK ENIC Service provides the only UK Government approved assessment of, and statements of comparability between, overseas qualifications and UK qualifications. This service is essential for recruitment of students and workers in various sectors of the UK economy. The UK ENIC Service is used by Welsh higher education institutions and individuals both living in Wales and intending to study in Wales.”⁸

12. The Cabinet Secretary goes on to state:

“The primary object and purpose of clause 51 is within the remit of education i.e. access to higher education and recognition of qualifications pre and post higher education. Therefore, consent is required for clause 51 because it makes provision with regards to devolved matters in so far as they relate to education.”⁹

13. In the Memorandum, the Cabinet Secretary states that the UK Government's assessment is that consent may be required in respect of clause 51 of the Bill as introduced, but that clause 38 relates to “wholly reserved purposes of immigration and, therefore, consent is not required”.¹⁰

The Welsh Government's position

14. The Cabinet Secretary considers that it is appropriate to deal with these provisions in this Bill as the establishment of appropriate legal vires for historic fees charged in respect of the UK ENIC Service needs to be addressed through a UK wide approach as soon as possible.¹¹ In the Memorandum, she goes on to say:

“It would not be practicable for the Welsh Government to pursue retrospective legal vires for historic UK ENIC Service fees by seeking provision in a Senedd Bill nor would such an approach allow provisions to come into effect at the same time across the UK.

⁸ Memorandum, paragraphs 19 to 22

⁹ Memorandum, paragraph 23

¹⁰ Memorandum, paragraph 30

¹¹ Memorandum, paragraph 33

Furthermore, it is not possible to repeal the relevant provisions of the Illegal Migration Act 2023 through anything other than UK legislation.

Therefore, I recommend that the Senedd supports and gives its consent to clauses 38 and 51.”¹²

2. Committee consideration

15. We considered the Memorandum at our meeting on 17 March 2025.¹³

16. We wrote to the Cabinet Secretary on 21 March 2025¹⁴ in relation to the Welsh Government's conclusion on consent for clause 53 of the Bill as introduced (clause 55 of the Bill as amended in Public Bill Committee) and received a response on 11 April 2025.¹⁵

17. At our meeting on 28 April 2025, we resolved to agree our report outside of the meeting.¹⁶

Our View

Legislative consent

18. We note the Welsh Government's assessment of the provisions within the Bill that require the consent of the Senedd, as set out in the Memorandum.

19. We also note the position of the UK Government as regards consent, and that it considers that clause 38 relates to wholly reserved matters.

Conclusion 1. We agree with the Welsh Government's assessment, as set out in the Memorandum, of the provisions within the Bill which require consent of the Senedd in accordance with Standing Order 29; but this is subject to our views set out in conclusion 2.

20. As highlighted above, we wrote to the Cabinet Secretary asking for clarity on why the Welsh Government does not consider that the Senedd's consent should be sought for clause 53 of the Bill as introduced.

¹² Memorandum, paragraphs 33 to 35

¹³ ~~Legislation, Justice and Constitution Committee~~, 17 March 2025

¹⁴ ~~Letter to the Cabinet Secretary for Social Justice, Trefnydd and Chief Whip~~, 21 March 2025

¹⁵ ~~Letter from the Cabinet Secretary for Social Justice, Trefnydd and Chief Whip~~, 11 April 2025

¹⁶ ~~Legislation, Justice and Constitution Committee~~, 28 April 2025

21. Clause 53 of the Bill as introduced contains a regulation-making power for the Secretary of State to make consequential provision. Regulations made under this provision may amend, repeal or revoke any enactment; clause 53(3)(c) of the Bill as introduced states that “enactment” includes an enactment contained in, or in an instrument made under, a Measure of Act of Senedd Cymru.

22. We note the Cabinet Secretary's response that clause 53 was not included in the Memorandum:

“... as it is a narrow power which is restricted to making required amendments to existing legislation as a direct consequence of the provisions of the Bill coming into force. This power will primarily be used in relation to reserved subject matters, as the majority of the Bill is outside legislative competence.”

23. We are not persuaded by this reasoning. For the purpose of Standing Order 29, a relevant provision is a provision that has regard to devolved matters. Whether that provision is narrow or broad is not a determining factor in the assessment as to whether the Standing Order is engaged. Furthermore, the Cabinet Secretary states that the power will “primarily be used” in reserved areas, thus implying that there will be some cases where it may be used in devolved areas.

Conclusion 2. We consider that clause 53 of the Bill as introduced (clause 55 in the Bill as amended in Public Bill Committee) contains provision that has regards to devolved matters and, as such, the Senedd's consent should be sought for clause 53 of the Bill as introduced.

Delegated powers

24. Finally we note that, while clauses 38 and 51 of the Bill as introduced do not themselves include delegated powers, clause 38 repeals sections 4, 20 and 58 of the *Illegal Migration Act 2023* which contain powers delegated to the Secretary of State enabling regulations to be made which could have had an effect on devolved matters.