

Legislative Consent: the Border Security, Asylum and Immigration Bill

1. Background

1. The Border Security, Asylum and Immigration Bill (“the Bill”) was introduced on 30 January 2025 and had its Second Reading on 10 February 2025. Committee Stage began on 27 February 2025.

2. According to the Long Title it is a Bill to make provision about:

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

3. Jane Hutt MS, Cabinet Secretary for Social Justice, Trefnydd and Chief Whip laid a Legislative Consent Memorandum on 17 February 2025 (“the LCM”).²

Scrutiny by the responsible committees

4. The LCM was referred to this Committee and the Children, Young People and Education Committee (CYPE) and the Legislation, Justice and Constitution Committee.

¹ House of Commons, [Border Security, Asylum and Immigration Bill \(as introduced\)](#)

² Welsh Government, [Legislative Consent Memorandum: Border Security, Asylum and Immigration Bill](#), 17 February 2025



5. This Committee considered the LCM at its meeting on 17 March and agreed to write jointly with CYPE Committee to the Cabinet Secretary asking for more information.³ A response was received on 2 April.⁴

2. Provision for which consent is sought

6. The UK Government state that clause 51 of the Bill as introduced (clause 53 of the Bill as amended in Public Bill Committee) engages the LCM process in Wales.⁵

7. The Welsh Government's view is that legislative consent is required for clauses 38 and 51 of the Bill as introduced.⁶ This report consider both clauses and an additional clause which may be relevant to the Senedd's procedures for legislative consent.

Clause 38

8. Clause 38 of the Bill as introduced repeals certain provisions of the Illegal Migration Act 2023.

9. Whilst the clause repeals the majority of the 2023 Act, the LCM is concerned with the repeal of sections 4, 20, 21, 57 and 58 specifically. The LCM states that they relate to legislation directing the treatment of unaccompanied children who may be in Welsh local authority care.⁷

What provisions would be repealed by clause 38?

10. The provisions being repealed by clause 38 were subject to a previous [Legislative Consent Memorandum and Supplementary Consent Memorandum](#).⁸ This Committee reported on the LCMs at the time and in both instances the Senedd withheld consent.⁹ However the provisions remained in the Bill which

³ A copy of the [outgoing correspondence is available online](#).

⁴ [Letter from the Cabinet Secretary for Social Justice, Trefnydd and Chief Whip to the Chairs of the Children, Young People and Education Committee and the Equality and Social Justice Committee](#), 2 April 2025

⁵ Border Security, Asylum and Immigration Bill, [Explanatory Notes](#)

⁶ Welsh Government, [Legislative Consent Memorandum: Border Security, Asylum and Immigration Bill](#), 17 February 2025

⁷ Welsh Government, [LCM: Border Security, Asylum and Immigration Bill](#), 17 February 2025, paragraph 14

⁸ Welsh Government, [Legislative Consent Memorandum: Illegal Migration Bill](#)

⁹ Equality and Social Justice Committee, [Legislative Consent: Illegal Migration Bill](#), 19 June 2023

then became the 2023 Act. The specific repeals contained within clause 38 are summarised below, none are currently in effect:

- **Section 4** conferred a power on the UK Secretary of State to make exemptions from the duty to remove individuals from the UK.
- **Section 20** allowed the Secretary of State to make regulations to extend the application of the sections relating to the accommodation of unaccompanied children to Wales, without the consent of the Senedd or Welsh Ministers.
- **Section 21** amended section 69 of the Immigration Act 2016 to enable the transfer of unaccompanied children between local authorities. This potentially included the transfer of unaccompanied migrant children out of Welsh local authority care.¹⁰
- **Section 57** removed the ability of persons subject to the duty to remove from the UK to appeal an age assessment decision under the Nationality and Borders Act 2022. This section also provided that a judicial review of an age assessment decision or a decision to make arrangements for removal based on that decision, would not prevent the exercise of a duty or power to remove a person from the UK under the 2023 Act.
- **Section 58** gave the Secretary of State the power to make regulations about the effect of a person's decision not to consent to the use of a specified scientific method for the purposes of an age assessment.

The UK Government's view

11. The UK Government believes that clause 38 relates to wholly reserved purposes of immigration and, therefore, that consent is not required.¹¹ This matches the position taken by the previous UK Government in relation to those clauses in the then Illegal Migration Bill.¹²

¹⁰ Welsh Government, [LCM: Border Security, Asylum and Immigration Bill](#), 17 February 2025, paragraph 16

¹¹ Welsh Government, ['LCM: Border Security, Asylum and Immigration Bill'](#), 17 February 2025, paragraph 30

¹² UK Government, ['Illegal Migration Bill: Explanatory notes'](#), 27 April 2023, page 12

12. The UK Government explains that the repeal of certain sections of the 2023 Act, including those for which the Welsh Government is seeking the Senedd's consent, will address:

"... provisions which prevent asylum decision-making, increase the backlog of asylum cases awaiting an outcome and put impossible pressure on asylum accommodation with significant costs to taxpayers."¹³

Welsh Government's view

13. The Welsh Government argues that clause 38 makes provision within devolved competence of the Senedd and therefore requires the Senedd's consent. It states that:

- section 4 of the 2023 Act conferred a power on the UK Secretary of State to make amendments, including consequential amendments to Measures or Acts of the Senedd; and that
- sections 20, 21, 57 and 58 impact on the devolved areas of social care and/or local authorities functions.¹⁴

14. The Welsh Government recommends granting consent. The Cabinet Secretary explained that this recommendation is on grounds that it is not possible to repeal the relevant provisions of the Illegal Migration Act 2023 through anything other than UK legislation.

Clause 51

15. Clause 51 of the Bill as introduced (clause 53 of the Bill as amended in Public Bill Committee) provides retrospective statutory authority for the charging of fees for services related to the comparability, recognition and assessment of qualifications obtained outside and within the UK. This retrospective power will remove the possibility of customers requesting refunds for fees paid for said services.

16. The Welsh Government explained why it was appropriate in their view to progress this in a UK Government Bill:

¹³ UK Government, '[Border Security, Asylum and Immigration Bill 2025: impact assessment](#)', paragraph 117

¹⁴ Welsh Government, '[Legislative Consent Memorandum: Border Security, Asylum and Immigration Bill](#)', 17 February 2025, paragraph 4-18 and 32.

“The historic contracting and fee charging arrangements for the UK ENIC Service were put in place by the UK Government but impact service users in Wales. There is uncertainty around when fees were first charged for these services, but it is possible that the fees may have been in place from at least 2014. It is therefore appropriate for provision to be made in the UK Government’s Bill rather than utilising a Senedd Bill to address this matter, as this deals with an arrangement that was set up and administered by UK Government.”¹⁵

The view of UK and Welsh governments

- 17.** Both governments agree that clause 51 of the Bill as introduced requires the consent of the Senedd as it relates to education.
- 18.** The Welsh Government recommends granting consent.

Clause 53

- 19.** Clause 53 of the Bill as introduced (clause 55 of the Bill as amended in Public Bill Committee) contains a regulation making power for the Secretary of State to make consequential provision including regulations that may amend, repeal or revoke any enactment. An “enactment” includes an enactment contained in, or in an instrument made under, a Measure or Act of Senedd Cymru.

The UK Government’s view

- 20.** The UK Government does not list clause 53 of the Bill as introduced as a provision in the Bill that engages the Legislative Consent Motion process.

The Welsh Government’s view

- 21.** The Welsh Government’s LCM does not make reference to clause 53 of the Bill as introduced and when queried in our joint letter, they responded to say:

“Clause 53 was not included in the LCM 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

¹⁵ Welsh Government, [LCM: Border Security, Asylum and Immigration Bill](#), 17 February 2025, paragraph 29

to reserved subject matters, as the majority of the Bill is outside legislative competence.”¹⁶

3. Our view

On the requirement for legislative consent

Both Welsh and UK governments agree on the need for a legislative consent motion with regards to clause 51 of the Border Security, Asylum and Immigration Bill (as introduced). However, while we acknowledge that clause 38 relates to the reserved matter of immigration it also relates to the devolved matters of social care and local authorities’ functions and it also repeals a power for the Secretary of State to disapply or modify the effect of Senedd legislation. Furthermore, in judging whether the legislative consent of the Senedd is required, **the test is not whether the Senedd has legislative competence to pass the exact same provision, but whether a UK Bill makes provision in relation to Wales that has regard to devolved matters.**

We therefore agree with the Welsh Government’s assessment that clause 38 of the Bill as introduced requires the legislative consent of the Senedd in addition to clause 51 of the Bill as introduced.

Conclusion 1. We agree with the Welsh Government that in addition to clause 51, clause 38 of the Border Security, Asylum and Immigration Bill as introduced (clauses 38 and 53 of the Bill as amended in Public Bill Committee) requires the legislative consent of the Senedd.

On the granting of consent

In our previous report on the provisions which clause 38 seeks to repeal, we expressed a majority view that it was inappropriate for the UK Government to legislate to change policy in devolved areas, especially without an agreement between governments or adherence to the Senedd’s legislative consent procedure.¹⁷ A majority of the Committee did not support the granting of consent for those provisions (one Member disagreed) a view which was shared

¹⁶ [Letter from the Cabinet Secretary for Social Justice, Trefnydd and Chief Whip to the Chairs of the Children, Young People and Education Committee and the Equality and Social Justice Committee](#), 2 April 2025

¹⁷ See Equality and Social Justice Committee, [Legislative Consent: Illegal Migration](#) Bill, 19 June 2023

by a majority in the Senedd as a whole when it withheld consent. Nevertheless the provisions still became law in the Illegal Migration Act 2023.

Given that a majority of the Committee did not support these provisions in 2023, it logically follows that a majority support the clause that seeks to repeal the same provisions. A majority of the Committee support the granting of consent in relation to clause 38, one Member disagreed. In addition, while supporting the granting of consent, another Member objected in principle to the UK Government legislating in a subject area which is devolved to Wales.

In relation to clause 51 of the Bill as introduced we note the reason given for pursuing this devolved matter in a UK Government sponsored Bill and see no reason to oppose the granting of legislative consent.

Recommendation 1. We recommend that the Senedd grants legislative consent to the Border Security, Asylum and Immigration Bill (as set out in the Legislative Consent Memorandum).

On Clause 53

We note that Clause 53 of the Bill as introduced (clause 55 of the Bill as amended in Public Bill Committee) would enable the Secretary of State to make consequential provision. Such regulations may amend, repeal or revoke any enactment. This includes an enactment contained in, or in an instrument made under, a Measure or Act of Senedd Cymru. Despite appearing to meet the test that would trigger the legislative consent procedure, this has not been applied to Clause 53 of the Bill as introduced which is puzzling. When we queried this the Welsh Government wrote back offering only a partial explanation.¹⁸ It is vital that the Welsh Government sets out in full why it believes that this power does not require the Senedd's consent, and the purposes for which it may be used.

Recommendation 2. During the Senedd's debate on the Border Security, Asylum and Immigration Bill LCM, the Welsh Government should clarify to the Senedd why it believes that the power contained in clause 53 of the Bill as introduced does not require the Senedd's consent, and for what purposes it believes the power will be used.

¹⁸ [Letter from the Cabinet Secretary for Social Justice, Trefnydd and Chief Whip to the Chairs of the Children, Young People and Education Committee and the Equality and Social Justice Committee](#), 2 April 2025