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From: David Graham
Date: 22 May 2025
To: Kathy O'Hanlon

Westminster Border Security Asylum and Immigration Bill – Legislative Consent Motion

SUMMARY

Business Area: Protection and Organised Crime Division

Issue: Briefing on the Westminster Border Security Asylum and Immigration Bill – Legislative Consent Motion

Action Required: To note the written briefing ahead of the oral briefing on Thursday 29 May 2025

Attendees: Debbie Corry, Debbie Head of Organised Crime Branch
Fiona Scullion, Head of Policing, Strategy and Engagement Branch
Matthew Bunting, Policy Adviser

Introduction

I wrote to you on 23rd April in relation to the Westminster Border Security, Asylum and Immigration Bill, to provide the Committee with an overview of the Bill, a copy of a Memorandum which was laid in the Assembly to advise on the content of the Bill and the measures which apply to Northern Ireland. At that stage the Minister was not seeking legislative consent, however, the Memorandum noted that she intended to do so in the coming weeks. I said that I would keep the Committee informed of the Bill's progress.

2. Following consideration at the Executive meeting on Thursday 15th May, agreement was given to proceed with a Legislative Consent Motion and Memorandum. The Motion seeks

consent for the four Northern Ireland related measures contained in the Bill upon introduction. Three of these measures fall to Department of Justice (DoJ) and one measure to Department of Economy (DfE). Committee members will recall from the earlier update that an offer had been made to include the Department for Economy measure in a joint LCM, led by DoJ. This offer was accepted by DfE.

3. Following the LCM being Laid with the Business Office, we were made aware by Home Office that an updated version of the Bill had been published with four amendments being added. Whilst these amendments make no changes to the four Northern Ireland measures for which legislative consent is sought, it did change some of the clause numbers. For the remainder of this paper, and to remove any confusion with previous briefing, I have referred to the clause numbers in the Bill as originally introduced.
4. This paper provides an overview of the provisions in the Bill, which relate to devolved matters in advance of an oral briefing by officials on 29 May 2025. It also provides an update on the tabling of the associated Legislative Consent Motion and Memorandum in the Assembly.
5. 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.
6. The purpose of the Bill in its entirety 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.
7. The clauses for which the Department is seeking legislative consent relate primarily to serious and organised crime.

Background

8. The Bill was introduced to the UK Parliament on 30th January 2025. The most recent printed version of the Bill and explanatory note can be found at: [Border Security, Asylum and Immigration Bill publications - Parliamentary Bills - UK Parliament](#)
9. The Bill contains a wide range of policy proposals and comprises 4 parts, 59 clauses and 2 schedules. Not all of these will extend to Northern Ireland.
10. In addition to the measures which engage the legislative consent process, there are a number of provisions in the Bill that are reserved or excepted matters. Whilst these are relevant and applicable to Northern Ireland, **they are for the UK Government to legislate on and sit outside of the remit of the Department of Justice.** These measures are:
 - **Clauses 1-12** -The Border Security Commander;
 - **Clauses 13-17** -Offences relating to articles or information for use in immigration crime;
 - **Clause 18** - Endangering another during sea crossing to United Kingdom;
 - **Clauses 19-26** - Powers of search etc in relation to electronic devices (except for police constables, which does not apply in Northern Ireland);
 - **Clauses 27-29 and 32-33** - Sharing of information (sharing of customs information by HMRC)
 - **Clauses 34-35** - Provision of biometric information by evacuees etc;
 - **Clause 37** - Repeal of the Safety of Rwanda (Asylum and Immigration) Act 2024;
 - **Clauses 38-39** - Repeal and amendment of the Illegal Migration Act 2023;
 - **Clause 40** - Immigration advisers and immigration service providers;
 - **Clause 41** - Detention and collection of biometric information pending deportation;
 - **Clause 42** – Sets out rights of entry and residence etc in relation to EU Settlement Scheme.
 - **Clause 43** – Sets out conditions on limited leave to enter or remain and immigration bail.
 - **Clause 44** - Powers to take biometric information;
 - **Clauses 48-49** - Electronic monitoring requirements for Serious Crime Prevention Orders and Interim Serious Crime Prevention Orders in terrorism cases only;
 - **Clause 49** - The introduction of Interim Serious Crime Prevention Orders in terrorism cases only; and

- **Clause 53** - Validation of fees charged in relation to qualifications (in respect of the Home Office's Visas and Nationality Service).
- **Clauses 54-59** – General provisions relating to financial provisions, consequential and minor provisions, regulations, extend commencement and the short title.

Summary of provisions which extend and apply to Northern Ireland

11. The main **devolved areas for which I am seeking legislative consent** for Westminster to legislate on are set out below.

- **Clauses 30-33** - Sharing of information - sharing of trailer data by DVLA – this creates an information sharing power for the Secretary of State for Transport to share trailer registration information held by the Driver and Vehicle Licensing Agency (“DVLA”) with the Home Office, HM Revenue and Customs, the National Crime Agency, the police and authorised persons in Gibraltar and the Crown Dependencies (specified members of those territories’ police/customs/immigration organisations).

This discretionary power enables the sharing of data held under the Haulage Permits and Trailer Registration Act 2018 for purposes of immigration enforcement, law enforcement, national security, customs functions, human welfare, or responding to emergencies. The information can also be shared with authorised UK policing personnel, such as constables, for defined policing purposes, ensuring flexibility in addressing various public safety and security needs.

- **Clauses 45-47** – Offences relating to articles for use in serious crime - This measure creates two new criminal offences of possessing any specified article where a person intends, or has reasonable grounds to suspect, that it will be used in connection with any serious offence; and of importation, manufacture, adaptation, supply or, offering to supply a specified article where there are reasonable grounds to suspect that the article will be used in any serious offence. This would cover areas such as vehicle concealments used to transport illicit goods, templates for 3D-printed firearms components, an encapsulator and tablet presses used in the supply of illegal drugs. A person who commits an offence under these provisions is liable for on summary conviction to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum (or both); or on conviction on indictment, to imprisonment for a term not exceeding the 5 years or a fine (or both). The measure also includes a power for the Secretary of State to add articles to

the list by amending the legislation via regulations. There is a requirement for the Secretary of State to consult the Department of Justice before doing so.

- **Clause 49** - this measure makes it an offence to breach any ISCPO which has been issued throughout the UK.
- **Clause 53** - Validation of fees charged in relation to qualifications (in respect of the Department of Education's UK ENIC services insofar as they relate to education). This clause establishes retrospective power for the charging of fees for services related to the comparability, recognition and assessment of qualifications obtained outside and within the United Kingdom.

Additional Measures which could be extended to Northern Ireland (if any of these measures were to be extended to Northern Ireland, they would be subject to a second LCM).

12. Committee members will be aware that in my last update I advised of three further measures that could potentially be extended to Northern Ireland by amendment.

13. Those measures are:

- Powers of search etc in relation to electronic devices (for police constables) (clauses 19-26). The purpose of this clause is to enable law enforcement agencies to be able to download information from electronic devices from irregular migrants that have sought entry into the UK. This power will only be applicable for immigration purposes and is to enable intelligence to be gathered with a view to tackling the harm that is caused by Organised Crime Groups. Discussions are ongoing as to whether this is an excepted matter and may not require an LCM.
- Serious Crime Prevention Orders (clauses 48-52) (except for electronic monitoring requirements for terrorism only cases, which apply to Northern Ireland, included above); and
- Interim Serious Crime Prevention Orders (clauses 49-50) (except for Interim

Serious Crime Prevention Orders in terrorism only cases, which apply to Northern Ireland as a reserved policy area.

14. In the previous paper I stated that officials were currently carrying out further scoping work with Home Office and partner organisations in relation to Clauses 19-26 Powers of Search etc in relation to electronic devices. This remains the case. In respect of the Serious Crime Prevention Orders (SCPOs) and Interim Serious Crime Prevention Orders (ISCPOs), having taken advice from officials who have engaged with operational partners, the Minister has indicated that she is not minded to extend these measures to Northern Ireland as part of this Bill. This is because the Department wants to carry out further engagement and scoping work and consult on any potential changes to the existing regime.

Need for an LCM

15. Whilst the Minister appreciates that it is preferable that the Assembly legislate on what are devolved matters, where possible, the constraints on the legislative programme in this mandate mean that it would not be possible to achieve equivalent legislation via an Assembly Bill within the same timescale as can be achieved in the Westminster Bill. In addition, for serious crime related measures it has more recently been the case that these are legislated for at Westminster in order that a consistent approach is maintained across the UK, ensuring that Northern Ireland does not become a loophole where serious crime activity can be carried out while it is legislated against in other regions. A number of the provisions in the Bill, which relate to devolved matters, will apply across the UK. These matters do not fall within the remit of the Department of Justice.

Timing and LCM agreement

16. Whilst no official time frame has been provided by Home Office in relation to the passage of this Bill, we believe we are to extend these measures to Northern Ireland via the Legislative Consent process, this may be one of the only opportunities to do so.

Wording of the LCM

17. The proposed wording of the LCM is set out below:

That this Assembly agrees to the extension to Northern Ireland of provisions upon introduction within the Border Security, Asylum and Immigration Bill dealing with sharing of information

(contained in Part 1, Clauses 30 to 33); offences relating to articles for use in serious (contained in Part 3, Clause 45-47) ; breach of an Interim Serious Crime Preventions Order in non-terrorist cases (contained in Part 3, Clause 49); and validation of fees charged in relation to qualifications (clause 53) (in respect of the Department of Education's (England) UK ENIC services insofar as they relate to education).

Equality and Human Rights

18. The Department has been engaging with the Northern Ireland Human Rights Commission in relation to the devolved measures which fall to DoJ within the Bill. A copy of their initial high-level assessment is attached at Annex A. We understand that the Commission hope to publish their scrutiny of the Bill in the coming weeks. The Department's assessment is that the proposals are considered to be compliant.
19. Advice has been sought from the Northern Ireland Human Rights Commission in respect of clauses 30-33. The UKG Human Rights Memorandum provides their assessment that the proposed power represents a proportionate interference with the right to private life, however, determining compatibility with Article 2 will also depend on an assessment of the forthcoming regulations to be made under Clause 32(8) and an understanding of how disclosures are to be conducted in practice, so it is difficult to be completely definitive in the absence of that information.
20. However, clause 32 does provide an important safeguard that "Sections 27 to 31 do not authorise a disclosure of information if the disclosure would contravene the data protection legislation or the investigatory powers legislation (but in determining whether a disclosure would do either of those things, the powers conferred by those sections are to be taken into account)".

Next Steps

21. Following Executive agreement at their meeting on 15th May, a Legislative Consent Motion and Memorandum was laid with the Business Office. I look forward to the committee beginning their scrutiny of the Bill and the subsequent production of

FROM THE OFFICE OF THE JUSTICE MINISTER



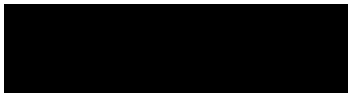
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their report.



**DAVID GRAHAM
DALO**

Enc: Annex A

Initial Assessment from Northern Ireland Human Rights Commission

Clauses 30 – 33

As you set out in your email these clauses effectively establish a data sharing power relating to trailer data. Similar to the proposed power relating to driver's licence details this power will engage Article 8 of the ECHR. The UKG in their human rights memorandum set out their assessment that the proposed power represents a proportionate interference with the right to private life. Ultimately compatibility will depend on how disclosures are conducted in practice. It is noted that clause 32 provides that "Sections 27 to 31 do not authorise a disclosure of information if the disclosure would contravene the data protection legislation or the investigatory powers legislation (but in determining whether a disclosure would do either of those things, the powers conferred by those sections are to be taken into account)". This provision provides some reassurance that the risk of arbitrary disclosures will be mitigated in practice.

It would be helpful to review these clauses against analysis provided by the Commission relating to sharing of drivers' licence information.

Clause 43

The proposed Clause 43 would have the effect of reversing the evidential burden of proof. The reversal of evidential burdens of proof are permissible under Article 6 of the ECHR. However the European Court of Human Rights have made clear that Article 6(2) "requires States to confine them within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence" (*Salabiaku v France* (1988) 13 EHRR 379 at para 28). It is therefore important that the Department assures itself that the public interest and rights of a prospective defendant have been taken into account in designing the proposed reversal.

Clause 47

In relation to interim Serious Crime Prevention Orders, it is noted that these would be available only where an application for a serious crime prevention order has not been determined. In their press release on the Bill the Home Office highlighted the necessity of interim Serious Crime Prevention Orders as securing a Serious Crime Prevention Order can be “a complex and lengthy process, restricting the use of this powerful tool”. In considering the potential to expand these provisions to non-devolved matters in NI the Department may wish to consider whether the current arrangements for obtaining Serious Crime Prevention Orders in NI is complex and lengthy.

It is noted that an interim Serious Crime Prevention Order may be served without notice. The imposition of an interim Serious Crime Prevention Order will clearly engage Article 6. The courts will play a key role in ensuring that an individual’s right to fair trial is respected when an interim Order is sought. The Department should therefore assure itself that NI courts are appropriately resourced to consider interim Orders.

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