

BORDER SECURITY, ASYLUM AND IMMIGRATION BILL - MEMORANDUM LAID BEFORE THE ASSEMBLY UNDER STANDING ORDER 42A (4)(b)

Background

1. This memorandum has been laid before the Assembly by the Minister of Justice under Standing Order 42A(2). The Border Security, Asylum and Immigration Bill was introduced in the House of Commons on 30th January 2025. The latest version of the Bill can be found at:

[*Border Security, Asylum and Immigration Bill](#)

A copy of the Bill upon Introduction can be found at:

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

2. Standing Order 42A Legislative Consent Motions details the procedure for seeking the agreement of the Assembly to the United Kingdom Parliament considering provisions of a Bill which deal with a devolution matter.
3. The purpose of this Memorandum is to update members on the introduction of the Border Security, Asylum and Immigration Bill, highlight the relevant Northern Ireland related provisions and advise that the Minister of Justice intends to bring forward a Legislative Consent Motion in due course.

Summary of the Bill and its policy objectives

4. The Bill contains a number of provisions, mostly relating to England and Wales. There are matters that are proposed to extend to Northern Ireland that engage the LCM process as well as matters that are reserved or transferred which do not engage the LCM process.

5. The UK Government has set out that 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.
6. The Bill includes the following measures:
 - a. Clauses 1 to 12 set out provisions to make the Border Security Commander a Statutory Office Holder and details their functions in this role.
 - b. Clauses 13 to 18 set out new offences in relation to the preparatory acts to commit an immigration offence and endangering another during a sea crossing to the United Kingdom.
 - c. Clauses 19 to 26 set out the powers for an immigration officer or police constable to search, seize and retain information stored on electronic devices.
 - d. Clauses 27 to 33 relate to the sharing of customs information by His Majesty's Revenue and Customs (HMRC) and the sharing of trailer registration information to assist with Home Office functions.
 - e. Clauses 34 and 35 set out provisions relating to the provision of biometric information outside of a visa application process and the use and retention of that information.
 - f. Clause 36 sets out the powers in ports in Scotland to take fingerprints.
 - g. Clauses 37 to 39 set out the repeal of immigration legislation in relation to certain sections of the Illegal Migration Act 2023 and the entirety of the Safety of Rwanda (Asylum and Immigration Act) 2024.

- h. Clause 40 sets out new powers in relation to the Immigration Services Commissioner.
 - i. Clause 41 sets out changes to the power to detain a person ahead of deportation.
 - j. Clause 42 sets out rights of entry and residence etc in relation to EU Settlement Scheme
 - k. Clause 43 sets out conditions on limited leave to enter or remain and immigration bail
 - l. Clause 44 sets out new powers in relation to the taking of biometric information.
 - m. Clauses 45 to 47 set out a new offence in relation to the articles used in Serious Organised Crime.
 - n. Clauses 48 to 52 set out amendments to Serious Crime Prevention Orders and the introduction of Interim Serious Crime Prevention Orders.
 - o. Clause 53 sets out the validation of fees charged in relation to the recognition of professional qualifications.
 - p. Clause 54 to 59 sets out the general provisions relating to financial provisions, consequential and minor provisions, regulations, extend commencement and the short title.
7. The UK Government considers the following provisions to relate wholly to reserved or excepted matters in Northern Ireland, in particular: the excepted matters of immigration (paragraph 8, Schedule 2 to the Northern Ireland Act 1998); tax (paragraph 9 of the same); national security (paragraph 17 of the same); and the reserved matters of crime (paragraph 9, Schedule 3 to the same Act); firearms (paragraph 12 of the same); import and export control (paragraph 20 of the same).

8. Specific elements of Bill of relevance to Northern Ireland 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*)
- Clause 19-26 (*Powers of search etc in relation to electronic devices (except for police constables, which does not apply in Northern Ireland)*)
- Clauses 27 to 29 and 30 to 33 (*Sharing of information (sharing of customs information by HMRC)*)
- Clauses 34 to 35 (*Provision of biometric information by evacuees etc*)
- Clause 37 (*Repeal of the Safety of Rwanda (Asylum and Immigration) Act 2024*)
- Clauses 38 to 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 (*EU Settlement Scheme: rights to entry and residence etc*)
- Clause 43 (*Conditions on leave and bail*)
- Clause 44 (*Powers to take biometric information*)
- Clauses 45 to 47 (*Offences relating to articles for use in serious crime*)
- Clause 48 to 49 (*Electronic monitoring requirements for Serious Crime Prevention Orders and Interim Serious Crime Prevention Orders in terrorism cases only and the introduction of Interim Serious Crime Prevention Orders in terrorism cases only*)
- 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)*)
- Clauses 54 to 59 (*General clauses*)

Provisions which deal with a Devolution Matter

9. The devolved areas for which legislative consent is sought through this Memorandum for Westminster to legislate on our behalf are set out below and relate wholly or partially to transferred matters. There are four broad areas covered, under headings in the Border Security, Asylum and Immigration Bill, dealing with:

- (i) Sharing of information (Clauses 30-33) – sharing of trailer data by DVLA
- (ii) Offences relating to articles for use in serious crime (Clauses 45-47);
- (iii) Breach of an Interim Serious Crime Prevention Order in non-terrorism cases (Clause 49); and
- (iv) Validation of fees charged in relation to qualifications (Clause 53).

10. Clauses 30 to 33 Sharing of information - sharing of trailer data by DVLA.

The Government is considering a policy solution to create an information sharing power for the Home Office, the NCA, Police Forces and HMRC to acquire trailer registration data from the DVLA.

11. Clause 30 relates to the supply of trailer registration information by the Secretary of State for Transport.

12. Subsection (1) establishes a discretionary power for the Secretary of State for Transport to supply that information in accordance with subsections (3) to (8). Subsection (2) defines the meaning of “trailer registration information” as information held by the Secretary of State for Transport under Part 2 of the Haulage Permits and Trailer Registration Act 2018.

13. Subsection (3) makes provision for trailer registration information to be supplied to the Secretary of State for the Home Department for one or more of the purposes listed in subparagraph (a) to (f). These are (a) immigration purposes; (b) the law enforcement purposes; (c) human welfare purposes; (d) purposes connected with the exercise of functions under the Proceeds of Crime Act 2002, (e) safeguarding national security; and (f) responding to an emergency.
14. Subsection (4) makes provision for the trailer registration information being supplied to the Secretary of State by whom general customs functions are exercisable, for use in connection with those functions.
15. Subsections (5) and (6) make provision for the trailer registration information being supplied to the NCA and HMRC respectively for use in connection with any of their functions.
16. Clause 31 regulates the onward sharing of information supplied to persons under clause 30 specifically with respect to the Home Office, and a “UK authorised person” and a “UK authorising officer”; it is envisaged that any onward sharing will be on a case-by-case basis. It does not regulate onward sharing by the NCA and HMRC because “as creatures of statute” safeguards are provided for elsewhere. The same applies with respect to the Crown Dependencies and Gibraltar (for any information received under subsection 30(8)) as those territories are governed by their own legislation.
17. Subsection (1)(a) makes provision for a person who receives information under subsections 30(3), (4), (9) or (10), that is, the Secretary of State, an immigration officer; a designated customs official; the Border Security Commander; and the Director of Border Revenue, to supply that information to a person exercising

public functions (whether or not within the United Kingdom) for use in connection with any of the purposes listed in (i) to (viii). These are; (i) immigration purposes; (ii) the purposes of exercising a customs function; (iii) specified purposes related to policing; (iv) the law enforcement purposes; (v) human welfare purposes; (vi) safeguarding national security; (vii) responding to an emergency; and (viii) purposes connected with civil or criminal legal proceedings or a criminal investigation (including proceedings or an investigation outside the United Kingdom). Subsection (1)(b) makes provision for those persons to supply that information to another person in pursuance of; (i) an order of a court; or (ii) an agreement to which the United Kingdom or His Majesty's Government is a party.

18. Subsection (2) extends the disclosure powers in subsection (1)(a) and (b)(i) to a "UK authorised person" and a "UK authorising officer" who receives information under subsection 30(7).

19. Clause 32 makes general provision about disclosure with respect to clauses (27) to (31). Subsection (1) clarifies that nothing in clauses (27) to (31) limits how information may be supplied apart from those sections. Subsection (2) clarifies that nothing in clauses (27) to (31) authorises disclosure where it would otherwise contravene data protection legislation or the investigatory powers legislation in the UK but that in determining whether a disclosure would do either of those things, the powers conferred by those sections are to be considered. Subsection (3) defines the meanings of "the data protection legislation" by reference to the Data Protection Act 2018; and "the investigatory powers legislation" by reference to the Investigatory Powers Act 2016.

20. Clause 33 is concerned with the interpretation of clauses (27) to (31).

Subsection (1) states this as its purpose.

21. Subsection (2) defines references to persons as having the meanings specified, including with reference to any acts (as applicable) regarding; “the Border Security Commander”; a “designated customs official”; “the Director of Border Revenue”; “HMRC”; and an “immigration officer”.

22. Subsection (3) defines a “UK authorised person” for the purposes of any information supplied under (a) section 27 (supply of customs information by HMRC) and (b) section 30 (supply of trailer registration information by the Secretary of State for Transport) and section 31 (onwards sharing of information shared under section 30), where a person in the first column of the subsequent table may be authorised to receive the information by the authorising officer specified in the corresponding entry in the second column of the table

23. Clauses 45 to 47 (Offences relating to articles for use in serious crime).

Offences relating to articles for use in serious crime 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.

24. Clause 45 (Articles for use in serious crime) This clause 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. For the purposes of

these criminal offences, “serious offence” means the serious offences specified in Schedule 1 to the Serious Crime Act 2007. These include offences such as fraud, money laundering, terrorism, and drug and people trafficking.

25. Subsections (1) and (2) create the offences of possession and importation, manufacture, adaptation, supply or offering to supply an item (listed in Clause 44 (1)), referred to as a ‘relevant article’, in circumstances which give rise to a reasonable suspicion that the article will be used in connection with any serious offence.

26. Subsection (8) sets out the maximum penalties in relation to these offences in England and Wales, Scotland, and Northern Ireland, respectively. The maximum penalty on summary conviction in Northern Ireland is imprisonment for a term not exceeding 6 months or a fine limited to level 5 on the standard scale (£5,000) or both. In England and Wales, Scotland, and Northern Ireland the maximum penalty for conviction on indictment is five years’ imprisonment, or a fine, or both.

27. **Clause 46 (Section 45: meaning of “relevant article”)** defines a ‘relevant article’ referred to in Clause 43, that is a 3D printer firearms template used to produce any part of a firearm; an encapsulator (device used to produce capsules); a tablet press; and a vehicle concealment (a compartment to conceal things or people). There is also the power to amend the list of articles.

28. Subsection (2) sets out the definition of: a “3D printer firearm template” to be any document (any form of information) that may be used in conjunction with a 3D printer to produce any part of a firearm (as defined by section 57 of the Firearms Act 1968); an “encapsulator” to mean any device which may be used to produce capsules; a “tablet press” to include any device which may be used

to produce tablets; “vehicle” (as defined in section 1(1) of the Customs and Excise Management Act 1979); and “vehicle concealment”, meaning a compartment which forms or is intended to form part of (or be attached to) a vehicle and which conceals or facilitates the concealment of things or people or is intended to facilitate their concealment.

29. Clause 47 (Confiscation of assets) This clause amends the Proceeds of Crime Act (POCA) 2002, which adds ‘offences relating to things for use in serious crime’ into the relevant territorial schedules, as set out in subsection (2) (3) and (4). This means the ‘relevant articles’ listed in Clause 44 may be confiscated under POCA.

30. Clause 49 Breach of an Interim Serious Crime Prevention Order in non-terrorism cases. Section 5E (1) (b) extends the power to issue ISCPOs to the appropriate court in Scotland and the High Court in Northern Ireland, specifically in cases that are terrorism-related (as defined in Section 8A of the SCA 2007). This will allow law enforcement to apply directly to the High Court to impose immediate restrictions while a full order is considered. They will also strengthen the tools available to law enforcement and in some cases allow investigations and prosecutions to continue whilst preventing further serious criminality from taking place. Section 10A (6) amends section 25(1) of the SCA 2007 to align ISPCOs with main application SCPOs that the person commits an offence if they fail to comply with an order without reasonable excuse.

31. 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.

It has been determined that these fees in whole or part require, or may require, a statutory basis. This statutory basis has not been in place for a part or the whole of the period of their being charged by several government departments, currently the Home Office and the Department for Education.

Reasons for not seeking a legislative consent motion

32. Whilst consent is not being currently sought presently, **formal consent will be sought for the provisions which fall within the remit of the Department of Justice once the required Executive approval and engagement with the relevant Committees has taken place.**

33. The purpose of this Memorandum is to ensure that all members of the Assembly are aware of the Bill and its content.

Engagement with the Executive and the Committee for Justice

34. Engagement with the Executive and Justice committee is ongoing. At all stages they will be kept informed of the proposed approach.

Conclusion

35. It is the view of the Department that further time is needed to fully engage with partners, the Executive and the Justice Committee. Following this engagement, it is the intention of the Minister to bring forward a Legislative Consent Motion and Memorandum.

Department of Justice

13 May 2025