

LEGISLATIVE CONSENT MEMORANDUM

BORDER SECURITY, ASYLUM AND IMMIGRATION BILL

Draft legislative Consent Motion

1. The draft motion, which will be tabled by the Minister of Justice, is:
2. *“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).*

Background

3. 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](#)

4. The Bill is currently at Commons Committee Report stage.

Summary of the Bill and its policy objectives

5. 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 excepted which do not engage the LCM process.
6. 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.

7. 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.

8. 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).
9. 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 (England) UK ENIC services insofar as they relate to education)*)
 - Clauses 54 to 59 (*General clauses*)

Provisions which deal with a Devolution Matter

10. 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 three 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); and
- (iii) Breach of an Interim Serious Crime Prevention Order in non-terrorism cases (Clause 49).

11. **Clauses 30 to 33 Sharing of information - sharing of trailer data by DVLA.** The Government is considering a policy solution to create a discretionary power to enable the Secretary of State for Transport (acting through the Driver Vehicle and Licensing Agency (DVLA)) to disclose some or all of the information they hold on UK registered trailers with the Home Office, the police, the NCA and HMRC.
12. Clause 30 relates to the supply of trailer registration information by the Secretary of State for Transport.
13. 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.
14. 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.
15. 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.
16. 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.
17. Subsection (7) makes provision for the trailer registration information being supplied to a “UK authorised person” and a “UK authorising officer” (limited to persons engaged in policing by subsections 33(3) and (4)) for use in connection with; (a) “specified purposes related to policing” (subsection 33(8) confers regulation making powers); (b) the law enforcement purposes; and (c) safeguarding national security.

18. 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.
19. 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.
20. 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).
21. 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.
22. Clause 33 is concerned with the interpretation of clauses (27) to (31). Subsection (1) states this as its purpose.

23. 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”.
24. 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.
25. Subsection (4) defines “constable” as being inclusive of special constable; and defines “relevant Provost Marshal” and “service police force” with respect to the Armed Forces Act 2006. Subsection (5) defines a “UK authorising officer” as (a) a person having the direction and control of a body of constables, and (b) a Provost Marshal. Subsections (6) and (7) define a “non-UK authorised person” and a “non-UK authorising officer” referred in subsection 30(8) with respect to Jersey, Guernsey, the Isle of Man and Gibraltar. Subsection (8) defines the meanings of purposes or functions referred in sections 27-31.
26. Subsection (8) also confers a regulation making power on the Secretary of State to define “specified purposes related to policing”. Before making regulations under subsection (8), subsection (9) places a duty upon the Secretary of State to consult such of the following persons as they consider appropriate; (a) any person appearing to them to represent the views of a body of constables in the United Kingdom; (b) the Scottish Ministers; and (c) the Department of Justice in Northern Ireland.
27. **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.
28. **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.

29. Subsections (1) and (2) create the offences of possession and importation, manufacture, adaptation, supply or offering to supply an item (listed in Clause 45 (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.
30. Subsection (3) provides a defence for a person charged with one of the above offences if they can prove that they did not intend or suspect that the article would be used in connection with a serious offence.
31. Subsection (4) explains that a court can assume a person possessed the relevant article if there is proof that (a) the accused was in the same location as the relevant article, or (b) the relevant article was present in the location where the accused resided, or a location that the accused used habitually other than as a member of the public. The court cannot assume possession in this way where the accused shows they did not know of the article’s presence on the premises or that they had no control over it.
32. Subsection (5) and (6) explains that a person can be considered to have successfully proven their defence if they meet two key conditions: a) the defendant provides enough evidence to raise a question about the issue in court and b) the prosecution cannot prove the opposite beyond a reasonable doubt. Therefore, the defendant does not have to prove their case with absolute certainty; they just need to raise enough doubt, and if the prosecution cannot disprove this doubt, the defence succeeds.
33. This is a reverse evidential burden of proof. This differs from a reverse legal burden of proof, which would require the defence to prove evidence to the civil standard, which is the balance of probabilities.
34. 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.
35. **Clause 46 (Section 45: meaning of “relevant article”)** defines a ‘relevant article’ referred to in Clause 45, 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.

36. 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.
37. **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.
38. **Clause 49 Breach of an Interim Serious Crime Prevention Order in non-terrorism cases.** Section 5E (1) (b) extends the power to issue ISPCOs 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.
39. **Clause 53 Validation of fees charged in relation to qualifications.** 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 (England). This clause establishes that fees meeting the conditions in subsections (2)-(4) are taken to have been lawfully charged. Under subsection (6) the fees may have been

charged by the Secretary of State or persons acting through arrangements with the Secretary of State, for example an external supplier under a contract.

Reasons for making the Provisions

40. The provisions in the Border Security, Asylum and Immigration Bill that would be extended to Northern Ireland deal with a number of issues that would tackle serious organised crime and immigration crime across Northern Ireland. The devolved provisions that would extend to Northern Ireland are primarily in the justice sphere, dealing with new offences and more effectively dealing with organised crime.
41. The measures that are covered by this memorandum will see a number of positive changes in terms of strengthening the law to protect the public; enabling law enforcement agencies to respond to changing technology deployed by criminals; equipping law enforcement agencies with the necessary powers to address emerging crime types and threats; and ensure appropriate sentencing for those convicted of new offences.
42. Taken together the measures will further deal with and respond to serious crime and enable the sharing of information.
43. Through this, increased safeguards will be in place against criminal activity and the impact that this can have across all communities.
44. Establishing retrospective power for fees to be charged for UK ENIC services, removes the possibility of customers requesting refunds for fees paid for services, the benefits of which they have fairly received.

Reasons for utilizing the Bill rather than an Act of the Assembly

45. First, from a *policy perspective*, the criminal behaviour that the Bill seeks to address includes criminality which may be cross jurisdictional in nature and which therefore needs to be tackled in a consistent fashion across the UK. Organised crime knows no boundaries and it is considered that matters relating to tackling serious organised crime should, as far as possible, be handled consistently across the jurisdictions and not least in broad parity with England and Wales which has historically been the case in this area.
46. Second, in addition to policy reasons, there are *timing factors*. The nature of the provisions is such that it would be important for judicial and law enforcement consistency that they should come into force as early as possible. While it is of course preferable that the Assembly legislate on what

are devolved matters 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. Indeed, the failure to secure an LCM, or for agreement to be sought to the prospective provisions being included within the Border Security, Asylum and Immigration Bill, would mean it would likely be into the next mandate before legislation could be brought forward. It is therefore considered in the best interests of Northern Ireland, and all of our people that provisions are brought forward in a timely fashion.

47. It is worth noting that for the wider justice measures, dealing with serious organised crime that it has more recently been the case that these are legislated for at Westminster, with the Assembly's agreement, in order that a consistent approach is maintained across the UK, ensuring that Northern Ireland does not become a loophole where serious criminal activity can be carried out while it is legislated against in other regions.
48. Third, there are *procedural advantages*. There would be considerable complications in managing the combination of reserved and devolved measures by legislating at both Westminster and in the Assembly on the same general subject.
49. It is therefore recommended that the most appropriate approach is to request legislative consent from the Assembly for Westminster to legislate on behalf of Northern Ireland in relation to the specific provisions of the Border Security, Asylum and Immigration Bill as set out above.

Consultation

50. The Department of Justice has engaged with stakeholders and operational partners across the justice sector on these proposals who are supportive for the measures to be introduced and in particular the maintenance of parity with England and Wales as far as possible. For a number of organisations, where they operate across the UK this provides operational consistency. The new provisions are considered particularly important in relation to those aspects where offences may occur throughout the UK. There will of course need to be time following the passage of the legislation for operational arrangements and any associated IT changes to be put in place in order that the measures can be used as effectively as possible by operational partners. The Department will continue to engage with operational partners as the additional measures are introduced.

Human Rights and Equality

51. The Department has been engaging with the Northern Ireland Human Rights Commission in relation to devolved measures which fall with the responsibility of Department of Justice in the Bill. The Department's assessment is that the proposals are considered to be compliant.
52. 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.
53. 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)".
54. In relation to clause 53, advice has been sought from the Northern Ireland Human Rights Commission. The UKG Human Rights Memorandum provides their assessment that retrospective legislation in the circumstances of this case is clearly justified and proportionate.

Financial Implications

55. There are not considered to be significant financial implications arising from the measures contained in the Bill that it is proposed would extent to Northern Ireland.

Summary of Regulatory Impact

56. There is not considered to be a regulatory impact in terms of the provisions dealing with devolved matters as regards employment as well as costs to businesses, charities, social economy and the voluntary sector.

Engagement to date with the Committee for Justice and the Economy Committee

57. Given the lack of notice prior to Introduction, the subsequent time taken to finalise the policy position and fast pace with which the Bill has been

moving, there has been limited opportunity for engagement with the Committees until this point. The Justice Committee received a written update on the measures on 23rd April 2025. The Economy Committee has also received a written update in relation to Clause 53.

Conclusion

58. The view of the Minister of Justice is that, in the interests of an improved ability to deal with serious organised crime, as well as alignment in approach with neighbouring jurisdictions, that so far as the provisions of the Bill deal with a devolution matter they should extend to Northern Ireland.

Department of Justice
15 May 2025