



Equalities, Human Rights and Civil Justice Committee

Border Security, Asylum and Immigration Bill Legislative Consent Memorandum

Submission from the Scottish Refugee Council – 27 May 2025

As Scotland's national refugee charity, Scottish Refugee Council has 40 years' experience of providing information, advice and advocacy services to refugees and asylum seekers and supporting refugee integration in all its aspects. We work within increasingly complex and interconnected settings impacting refugees living in Scotland. We bring a unique contribution to national and UK refugee support.

We have provided our views below on the identified clauses in the Scottish Government's Legislative Consent Memorandum on the UK Border Security, Asylum and Immigration Bill. We have limited our response to the clauses we feel are most relevant to the work of Scottish Refugee Council, namely Clauses 38, 41, 42 and 51.

Clause 38 (repealing the Illegal Migration Act 2023 provisions)

Clause 38 repeals sections 24 and 28 of the Illegal Migration Act 2023. These disappplied specified powers and duties of the Scottish Ministers in the Human Trafficking and Exploitation (Scotland) Act 2015 ("the 2015 Act").

Neither of these sections have been brought fully into force.

This Clause has particular ramifications for Scotland as it impacts the Scottish Government's ability to fulfil its obligations under the Human Trafficking and Exploitation (Scotland) Act 2015, which mandated the provision of support and assistance to adult victims of trafficking.

From statistics collected by the Guardianship service we know that the majority of people in the trafficking support system are seeking asylum, and most of them (79%) come from Vietnam, Sudan, Iran, Syria and Afghanistan. These are primarily countries with a high grant rate, and there could be scope to offer protection on this basis.

Section 29 of the Illegal Migration Act 2023 remains in the Border Security, Asylum and Immigration Bill. This section focuses on disqualifying protections for individuals identified as potential victims of modern slavery or trafficking if they are deemed a "threat to public order" or have made claims in "bad faith."

Key provisions include the expansion of "threat to public order": This now includes anyone convicted of a crime with a prison sentence (excluding suspended sentences) or those liable for deportation under the Immigration Act 1971.

Under the Illegal Migration Act, victims of trafficking could be detained and face removal rather than receiving support. This applies even if they were forced or coerced into entering the UK irregularly by their traffickers. When victims of trafficking are removed from the UK they are usually at high risk of being re-trafficked and can end up back in the same situation.

It is important to note that many people who are trafficked are forced into criminal activity, and by virtue of being trafficked, people are much more likely to have a criminal record.

By making it more difficult for victims to come forward and seek help, trafficking survivors will be forced further underground, where they could continue to be exploited or re-trafficked.

Scottish Refugee Council's position is that the provisions in the Bill impact the obligation that exist under the Human Trafficking and Exploitation (Scotland) Act 2015 and the Legislative Consent process should be engaged. We agree that consent should be given by the Scottish Parliament to repeal Section 24 and 28 of the Illegal Migration Act.

Clause 41 (detention and exercise of functions pending deportation)

This will provide a power to the Secretary of State to authorise detention of a person while they consider whether:

- to make a deportation order against the person, or
- the person is a person to whom deportation of foreign criminals applies, under the UK Borders Act 2007.

Where fingerprints or photographs are taken under existing legislation that this amends, they can be used for reserved purposes. However, the Scottish Government says that in relation to other purposes, such as the investigation of crime, this would be a devolved matter.

Clause 42 (biometrics)

This clause will expand the list of persons authorised to take fingerprints from people with particular types of immigration status at detention centres in Scotland.

While the primary purpose of this clause is to take fingerprints for immigration purposes, the Scottish Government says "it enhances the possibilities for taking fingerprints which can then be used for devolved purposes."

Scottish Refugee Council's position is that we are opposed to migration being treated as a national security issue. This approach risks demonising a vulnerable group of people. This approach will harm refugees, especially children, and risk exacerbating racial discrimination. We agree that this enters the competency of the

Scottish Parliament but do not agree that the Scottish Parliament should provide legislative consent to Clauses 41 and 42.

Clause 51 - (validation of fees charged in relation to qualifications)

Clause 51 establishes a retrospective power for the charging of fees for services related to the “comparability, recognition or assessment of qualifications obtained outside and within the UK”, in connection with the [European Network of Information Centres](#) (ENIC) services.

The UK's [National Information Centre](#) provides these services on a UK-wide basis through a UK-wide service contract put in place by the UK Government.

It has been determined that these fees in whole or part require, or may require, a statutory basis.

The Scottish Government says that “fees charged for services related to the comparability, recognition and assessment of qualifications, which is not a reserved matter; therefore, the LCM process is engaged in respect of charging of fees from Scottish organisations or individuals for services provided to them.”

Scottish Refugee Council's position is that this legislative change has the potential to infringe on the competency of the Scottish Parliament. We note in particular the relevant commitments outlined in the New Scots Refugee Integration Delivery Strategy:

3.4 Work with Scottish professional bodies to understand and promote recognition pathways for industries and identified sectors.

2.1.3 Providing New Scots with access to information that allows them to understand the routes into employment based on their qualifications in identified sectors.

It is our position that the recognition of qualifications is a devolved matter, and the charging of fees for these services should engage Legislative Consent. We agree with the Scottish Government that consent should be given.