

LEGISLATIVE CONSENT MEMORANDUM

Border Security, Asylum and Immigration Bill

Background

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2(i). A member of the Welsh Government must lay a LCM in relation to any UK Government Bill that is a relevant Bill on its introduction to the first House, normally no later than 2 weeks after introduction. SO 29.1 provides that a “relevant Bill” means a Bill under consideration in the UK Parliament which makes provision (“relevant provision”) in relation to Wales that has regard to devolved matters.
2. The Border Security, Asylum and Immigration Bill (“the Bill”) was introduced in the House of Commons on 30 January 2025. The Bill can be found at: <https://bills.parliament.uk/bills/3929>

Policy Objective(s)

3. The UK Government’s stated policy objectives are to:
 - establish the architecture and provide 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.
 - 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.
 - enable a response to the range of current and future threats to the UK border, the intention in the immediate term is to support the Border Security Command’s focus on preventing, investigating and prosecuting Organised Immigration Crime (OIC), providing additional deterrents and penalties for criminals involved in such activity.
 - a. enable smarter, faster and more effective interventions to protect UK border security;
 - b. make it easier to detect, disrupt and deter those seeking to engage in and benefit from OIC, limiting the permissible environment and its impact; and
 - c. improve understanding of how and why OIC happens.

Summary of the Bill

4. The Bill is sponsored by the Home Office.
5. The Bill makes provision for:
 - making the Border Security Commander a Statutory Office Holder and details their functions in this role (clauses 1-12).
 - new offences in relation to the preparatory acts to commit an immigration offence and endangering another during a sea crossing to the United Kingdom (clauses 13-18).
 - powers for an immigration officer or police constable to search, seize and retain information stored on electronic devices (clauses 19-26).
 - 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 (clauses 27-33).
 - provision of biometric information outside of a visa application process and the use and retention of that information (clauses 34-35).
 - powers in ports in Scotland to take fingerprints (clause 36).
 - 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 (clauses 37-39).
 - new powers in relation to the Immigration Services Commissioner (clause 40).
 - changes to the power to detain a person ahead of deportation (clause 41).
 - new powers in relation to the taking of biometric information (clause 42).
 - a new offence in relation to the articles used in Serious Organised Crime (clauses 43-45).
 - amendments to Serious Crime Prevention Orders and the introduction of Interim Serious Crime Prevention Orders (clauses 46-50).
 - the validation of fees charged in relation to the recognition of professional qualifications (clause 51).
6. Officials from the UK Government's Department of Education have engaged Welsh Government officials about their proposals to legislate to provide retrospective statutory authority for fees charged in relation to the recognition of qualifications. As the Bill aims to rectify a deficit in historic legal vires and does not establish new operational policy in relation to the fees charged no public consultation has taken place.
7. It has not been possible to comply with the two week requirement to lay a memorandum (Standing Order 29.2) as Welsh Government officials were not able to consider clauses before introduction of the Bill (with the exception of clause 51 which UK Government had already identified as needing Senedd consent).

8. There are two clauses that are meet the LCM legal test, which are clauses 38 and 51.
9. Clause 38 relates to the proposed repeal of many sections of the Illegal Migration Act 2023, most of which have a wholly reserved purpose.
10. Clause 51 validates fees charged in relation to qualifications prior to the passing of the Bill, in one of three circumstances. The first relates to comparability, recognition or assessments for immigration or nationality purposes of a UK qualifications or a non-UK qualification. The second relates to services relating to comparability, recognition or assessment of non-UK qualifications for employment in the early years context. The third is in connection with services pursuant to an international agreement or arrangement relating to the comparability, recognition or assessment of UK qualifications or non-UK qualifications or the provision of information or advice about such qualifications or the systems for awarding them, or associated services.
11. The latter condition relates to the UK ENIC Service, which was procured by the UK Government which fulfils obligations of the UK under two treaties¹ (“the Conventions”). The Conventions aim to facilitate academic and professional mobility between states and enhance international cooperation and trust in higher education. To achieve these aims, the Conventions require signatory states to:
 - (i) Provide a mechanism for the fair assessment and recognition of overseas qualifications; and
 - (ii) Establish or maintain a ‘national information centre’ to facilitate access to information about qualifications and higher education systems.
12. To date the UK has met these obligations through services that DfE has contracted a provider (Ecctis) to supply. These include services to:
 - Individuals - such as documents (‘statements of comparability’) evidencing the comparability of an individual’s overseas qualification with qualifications awarded in the UK.
 - Organisations - such as bundle schemes by which organisations pay upfront fees for a pre-determined number of documents; and subscription schemes where organisations can pay for users to access restricted parts of the qualification database(s), newsletters, conferences and other ancillary benefits.

¹ The ‘Convention on the Recognition of Qualification concerning Higher Education in the European Region’, signed by the United Kingdom on 7th November 1997; and the ‘Global Convention on the Recognition of Qualifications concerning Higher Education’, signed by the United Kingdom on 25th November 2019.

Provisions in the Bill for which consent is required

13. This Legislative Consent Memorandum relates only to clause 38 and clause 51.

Clause 38

14. In relation to **clause 38**, this Memorandum is concerned with the specific repeal of sections 4, 20, 21, 57 and 58 (as captured in clause 38(1)(a), 38(1)(d) and 38(1)(f)) as these relate to legislation directing the treatment of unaccompanied children who may be in Welsh local authority care.
15. Section 4 of the Illegal Migration Act 2023 (“the 2023 Act”) conferred a power on the UK Secretary of State to make exemptions from the duty to remove individuals from the UK. Related regulations could include consequential amendments to Measures or Acts of Senedd Cymru.
16. Section 20 of the 2023 Act allowed the UK Secretary of State to extend clauses relating to the accommodation of unaccompanied migrant children to Wales. Section 21 enabled the transfer of unaccompanied migrant children between local authorities, including potentially out of Welsh local authority care. Sections 20 and 21 would have had an impact on devolved social care and local authorities’ functions.
17. Section 57 prevented appeals to the outcome of a so-called scientific method of age assessment. Section 58 gave the UK Secretary of State the power to make regulations regarding the refusal of a scientific age assessment. These provisions would have had an effect on the function of Welsh local authorities and other devolved authorities providing care and support to children under the Social Services and Well-being (Wales) Act 2014.
18. The five sections detailed above would be repealed by commencement of clause 38 under the Bill. The five sections were subject to a previous Legislative Consent Memorandum and Supplementary Legislative Consent Memorandum during the passage of the Illegal Migration Bill. In both cases, Senedd Cymru voted to withhold consent for UK Ministers to legislate. Nevertheless, the provisions remained in the Illegal Migration Bill as it became the 2023 Act.

Clause 51

19. **Clause 51** provides retrospective statutory authority for fees charged in connection with the following three services provided by a third-party supplier on behalf of the Home Office and the Department for Education (DfE):
- (i) The Home Office Visas and Nationality Service
 - (ii) The DfE UK European Network of Information Centres Services (the UK ENIC Service)
 - (iii) The non-UK Early Years Qualifications Recognition Service
20. The provision provides that where the conditions set out in the clause are met, a person to which this clause applies (i.e. the Secretary of State or a person other than the Secretary of State who charged the relevant fee pursuant to arrangements between that person and the Secretary of State) is taken to have had the power to charge fees for services. The conditions are that the fee was charged before the passing of the Bill, and the fee was charged in connection with the exercise of one of three functions. The first relates to comparability, recognition or assessments for immigration or nationality purposes of a UK qualifications or a non-UK qualification. The second relates to services relating to comparability, recognition or assessment of non-UK qualifications for employment in the early years context. The third is in connection with services pursuant to an international agreement or arrangement relating to the comparability, recognition or assessment of UK qualifications or non-UK qualifications or the provision of information or advice about such qualifications or the systems for awarding them, or associated services.
21. During a recent re-procurement exercise undertaken by the UK Government, it was identified that there is a lack of statutory authority for the fees charged for the Home Office Visas and Nationality service and the DfE Early Years service. DfE considers the UK ENIC services to be 'commercial' and not requiring statutory authority. However, DfE has concluded that there is a legitimate alternative analysis. As such, it has been decided to make statutory provision for charging for relevant services, and to include them within the Bill.
22. The UK ENIC Service provides the only UK Government approved assessment of, and statements of comparability between, overseas qualifications and UK qualifications. This service is essential for recruitment of students and workers in various sectors of the UK economy. The UK ENIC Service is used by Welsh higher education institutions and individuals both living in Wales and intending to study in Wales.
23. The primary object and purpose of clause 51 is within the remit of education i.e. access to higher education and recognition of qualifications pre and post higher education. Therefore, consent is required for clause 51 because it makes provision with regards to devolved matters in so far as they relate to education.

24. It is understood by Welsh Government officials that the main rationale behind the provision made by clause 51 is the avoidance of potential future costs to UK Government that may be incurred through refunds of fees charged for services provided to date under the UK ENIC Service. The value of this is inherently uncertain and depends upon behavioural factors of those who have paid for these services.
25. The UK Government has contracted with a service provider Ecctis since at least 2014. Fees have been charged by Ecctis to providers and individuals in Wales in connection with membership, requests and applications.
26. According to information sourced by the DfE during 2024 there were 17 organisations in Wales with active membership of the UK ENIC Service with over 700 requests made by Welsh members. During the period 2022 – 2024 there were over 1400 applications by individuals living in Wales to the UK ENIC Service. There will be a much larger number of individuals applying from overseas intending to study or work in Wales.
27. The Welsh Government has purchased membership of the UK ENIC International Comparisons database to support advice given to individuals, particularly people seeking sanctuary, to help them understand the equivalence and comparison of their international qualifications.
28. The Welsh Government's UK ENIC membership contributes to an action in the Anti Racist Wales Action Plan and Nation of Sanctuary to: *"Maintain and promote alignment between the CQFW, UK Qualifications Frameworks and the European Qualifications Framework to support sanctuary seekers to have their existing qualifications recognised"*.
29. 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.

UK Government view on the need for consent

30. The UK Government agrees that consent may be required in respect of clause 51. The UK Government believes clause 38 to relate to wholly reserved purposes of immigration and, therefore, consent is not required.

Financial implications

31. If the Senedd consents to provision made by clauses 38 and 51 applying to Wales there are no financial implications arising for the Welsh Government.

Conclusion

32. As set out above, the Bill makes provision within devolved competence of the Senedd and therefore consent of the Senedd is required.
33. In my view it is appropriate to deal with these provisions in this UK Bill as the establishment of appropriate legal vires for historic fees charged in respect of the UK ENIC Service needs to be addressed through a UK wide approach as soon as possible. It would not be practicable for the Welsh Government to pursue retrospective legal vires for historic UK ENIC Service fees by seeking provision in a Senedd Bill nor would such an approach allow provisions to come into effect at the same time across the UK.
34. Furthermore, it is not possible to repeal the relevant provisions of the Illegal Migration Act 2023 through anything other than UK legislation.
35. Therefore, I recommend that the Senedd supports and gives its consent to clauses 38 and 51.

Jane Hutt MS

Cabinet Secretary for Social Justice, Trefnydd and Chief Whip
17 February 2025