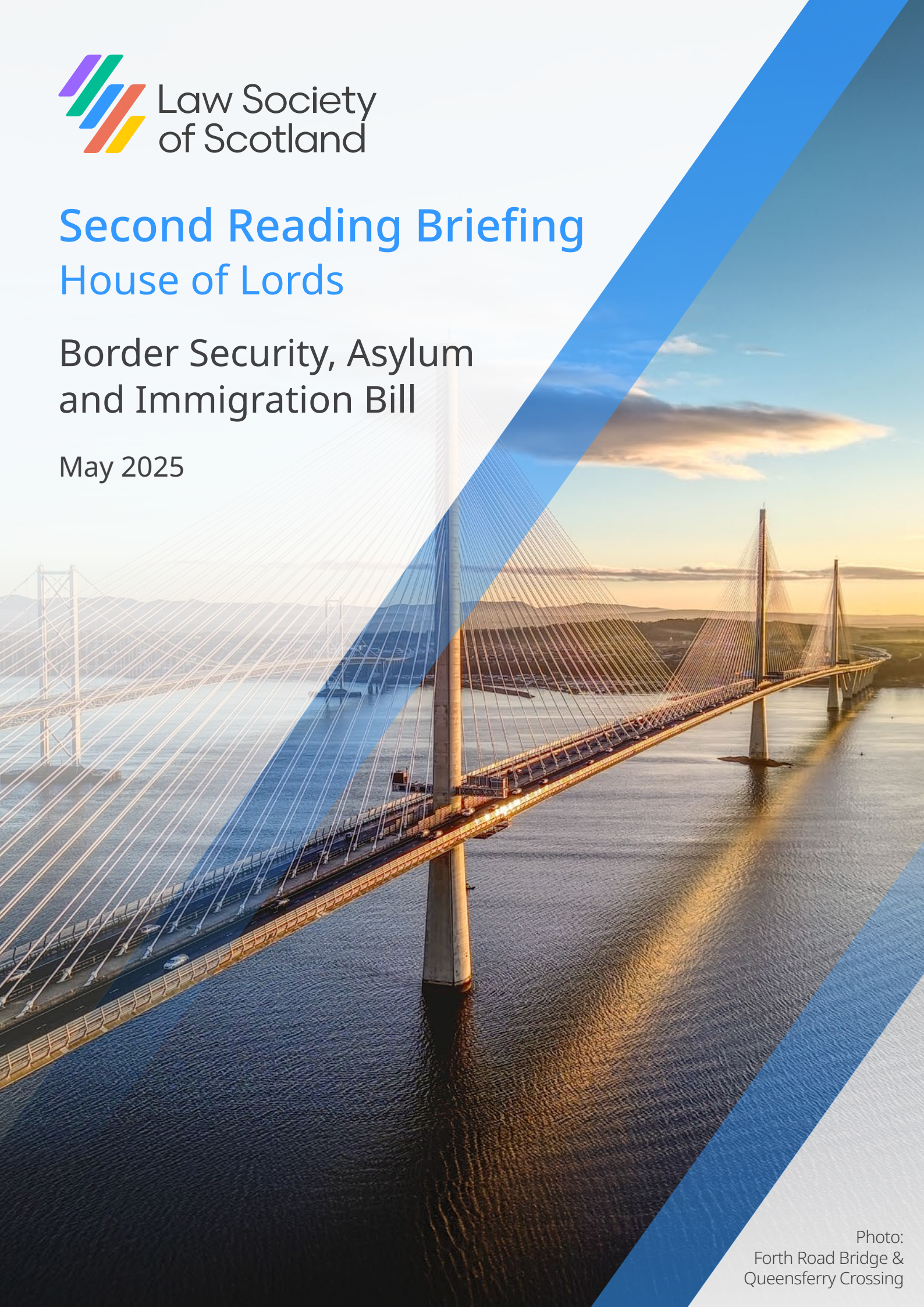


Second Reading Briefing House of Lords

Border Security, Asylum and Immigration Bill

May 2025





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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors. We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful, and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

The Border Security, Asylum and Immigration Bill 2025 was introduced in the House of Lords on 13 May 2025. The Bill covers important issues of border security and to a lesser extent makes changes to asylum and immigration law.

The Bill seeks to amend the UK's border security and change the asylum and immigration system by creating new and enhanced powers and offences that aim to reinforce, strengthen and connect capabilities across the government departments and law enforcement bodies.

The Bill's intentions are to support the Border Security Command roles of preventing, investigating and prosecuting Organised Immigration Crime (OIC) and to provide deterrents and penalties for those involved in such activity.

Specific Comments

Chapter 1

The Border Security Commander

Clause 3 of the Bill relates to the Functions of the Commander who must:

“(1)...have regard to the objectives of—

(a) maximising the effectiveness of the activities of partner authorities relating to threats to border security, for the purpose of minimising such threats, and

(b) maximising the coordination of those activities for that purpose.”

The Commander must from time to time

“(2)... issue a document (a “strategic priority document”) which sets out what, in the Commander’s view, are—

(a) the principal threats to border security when the document is issued, and

(b) the strategic priorities to which partner authorities should have regard in exercising their functions in relation to any of the threats identified under paragraph (a).

(3) A partner authority must have regard to the strategic priority document in exercising its functions in relation to threats to border security.”

Our Comment

It is noticeable that the Commander and the partner authorities must have regard to the clause 3 objectives and to the strategic priority document. This is not a rigorous obligation: “having regard” does not oblige the Commander or the partner authorities to follow the objectives or the strategic priority document. The value of both these elements is accordingly reduced. The true nature of “having regard” comes out in clause 9(2) where it refers to Guidance issued by the Secretary of State.

Clause 5 of the Bill states “A partner authority must, so far as appropriate and reasonably practicable, cooperate with the Commander in the carrying out of the Commander’s functions.”. The relationship between the Commander and the partner authority seems to be based on cooperation rather than compliance with the Commander’s instructions accordingly is the “Border Security Commander” the correct title for this officer.

Clause 8 provides:

- (1) This section applies if the Secretary of State thinks that— (a) the designation of a person as the Commander has terminated, or is going to terminate, and there will be a gap before a new designation is made, or*
- (b) the Commander is, or is going to be, temporarily incapacitated or temporarily unavailable to exercise the Commander’s functions.*

Our Comment

We take the view that clause 8 is vague in as much as it relies on what the Secretary of State “thinks” about the status of the person designated as the Commander. The Government should explain why this clause does not proceed upon the *knowledge* of the Secretary of State about the status of the Commander rather than what the Secretary of State thinks.

Clause 9 provides:

- “(1) The Commander must comply with directions given by the Secretary of State about the exercise of the Commander’s functions under this Chapter.*
- (2) The Commander must have regard to guidance issued by the Secretary of State about the exercise of those functions.*
- (3) Directions and guidance under this section may be revised or withdrawn from time to time.*

Our Comment

The Secretary of State should consult widely on the directions which will apply to the Commander and on the guidance which will be issued. The Secretary of State

should also be under an obligation to explain why directions or guidance will be withdrawn under subsection (3).

Chapter 2

Other Border Security Provision

The bill creates a number of offences such as supplying and handling articles for use in immigration crime (clauses 13 and 14). Clause 17 introduces an element of extra-territorial jurisdiction in relation to offences carried out outside the UK.

Whilst we may have further comments to make on part 2 we note the comments by the Refugee Council, that: "Criminalising men, women and children who have fled conflicts...does not disrupt the smuggling gangs' business model. When a refugee is clambering into a boat with an armed criminal threatening them, they are not thinking about UK laws but are simply trying to stay alive. ["Our response to the introduction of the Border Security, Asylum and Immigration Bill - Refugee Council"](#) and by Asylum Aid which is deeply concerned that the Bill continues to portray vulnerable asylum seekers as criminals for crossing the Channel without prior authorisation.

We also note that Clause 21 confers powers on "authorised officers" to confiscate migrants' mobile phones (or other "relevant articles") indefinitely. Given (a) the potentially draconian nature of this power, and (b) the fact that mobile phones are often asylum-seekers' only means of maintaining contact with family, we suggest that this power is subjected to a reasonable time limit.

Part 2

Asylum and Immigration

Clause 37 Repeal of the Safety of Rwanda (Asylum and Immigration) Act 2024.

Our Comment

We welcome the repeal of the Safety of Rwanda (Asylum and Immigration) Act 2024.

Clause 38 Repeal of certain provisions of the Illegal Migration Act 2023.

Our Comment

We welcome the repeal of certain provisions of the Illegal Migration Act 2023.

Debate in the House of Commons focussed on the six sections of the Illegal Migration Act that clause 38 would not repeal. Dame Angela Eagle said the six sections selected for retention have "operational utility and benefit". At the clause stand part debate clause 38 was retained in the bill without amendment. There would be merit in seeking further explanation from the Government about the operational utility this clause will bring.

Clause 40 Immigration advisers and immigration service providers

Our Comment

We agree with the amendments Schedule 1 contains amendments of Part 5 of the Immigration and Asylum 20 Act 1999 (immigration advisers and immigration service providers).

New Clauses

The Public Bill Committee added two new Government clauses to the bill during Committee stage:

- New clause 42 EU Settlement Scheme: rights of entry and residence etc

This Clause would address a legal complexity in post-Brexit residence rights for EU citizens and their family members. Not everyone covered by the UK's EU Settlement Scheme is covered by the UK-EU Withdrawal Agreement. As a result, people with seemingly identical immigration status may have different legal rights. Clause 42 addresses this by providing that all EU citizens and their family members with EU Settlement Scheme rights also have Withdrawal Agreement rights.

- New Clause 43 Conditions on limited leave to enter or remain and immigration bail

This clause allows for migrants to be fitted with ankle tags for 'electronic monitoring'. This is already permitted as a condition of immigration bail, but clause 43 would allow it as a condition attached to a grant of permission to enter or remain in the UK. The Home Secretary is also allowed to impose conditions requiring the person to stay in a particular place or area, amongst other conditions. The Government has said these powers are only intended to be used against "foreign criminals whose removal we are pursuing, but that we are presently unable to deport"

Legislative Consent

Certain provisions engage the Legislative Consent Convention such as:

- a. Provision and sharing of trailer registration information (clauses 30 to 33);
- b. Provision of biometric information at ports in Scotland (clause 36);
- c. Repeal of certain provisions of the Illegal Migration Act 2023 (clause 38);
- d. Detention and exercise of functions pending deportation (clause 41);
- e. Powers to take biometric information at detention centres (clause 42);
- f. Offences relating to articles for use in serious crime (clauses 43 to 45);
- g. Applicants for making of orders and interim orders (clause 48); and
- h. Validation of fees charged in relation to qualifications (clause 51).

The Scottish Government recommend that the Scottish Parliament consent to all clauses requiring consent: [Legislative Consent Memorandum](#).



For further information, please contact:

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