



Briefing: The Scottish Policy Context

November 2011

Scotland's devolved political structure has created a specific policy context that you need to understand when you want to get engaged with and influence policy areas that affect migrants in Scotland. This briefing looks at the UK Parliament, Scottish Parliament, Local Government and other public sector bodies and non-departmental public bodies.

The UK Parliament

Until the Scottish Parliament was convened (brought into being) in 1999, the UK Parliament had full political control in Scotland. It still holds power over many of the most important areas of policy for migrants. The areas it retains power in are called '*reserved matters*'.

Reserved matters include:

- Immigration and nationality
- Asylum
- Equality legislation
- Benefits and social security
- Employment
- The constitution
- UK foreign policy, including European Union policy
- UK defence and national security

The UK Parliament is based in Westminster, London (and sometimes referred to simply as 'Westminster'). The UK Parliament has two 'Houses'; the House of Commons and the House of Lords. Both Houses are involved in making laws (legislation), checking the work of the government (scrutiny), and debating current issues. Usually, the decisions made in one House have to be approved by the other. However, only the House of Commons can make decisions on financial Bills, such as proposed new taxes.

The House of Commons is made up of elected Members of Parliament (MPs), voted in by the public to represent specific local areas called constituencies. The political party with the largest number of Members of Parliament is the leading party and gains the right to set up a



Government Cabinet and appoint Ministers, who are almost always chosen from their elected MPs and Members of the Lords. At the moment, the UK has a coalition government – no single party won enough votes to lead, so the Conservative Party (with the most votes) made a deal to share some power with the Liberal Democrat Party in exchange for their support. The Cabinet is made up of about 20 senior ministers chosen by the Prime Minister. It decides on government policy and co-ordinates the work of the different government departments. Civil Servants work for Ministers in the various departments of Westminster Government.

The Home Office is the main Government department dealing with immigration and asylum issues; the UK Border Agency is an agency run by the Home Office.

The House of Lords includes members from all political parties and crossbench members who don't belong to a party. Members of the Lords (or peers as they are often known) are not affected by elections, as they usually become peers for life once elected by a political party or by the House of Lords itself. Some are hereditary peers, who have inherited the right to sit in the House of Lords. A smaller number of peers are Bishops of the Church of England. Most peers are invited to sit in the House of Lords because of some skill or expertise they can bring.

Committees in Westminster do much of the important work of Parliament, examining policy areas in detail and considering proposed laws. These usually focus on specific issues and can be made up of MPs, peers or both, with anywhere from 10 to 50 members. They may investigate important issues and call upon people from outside Government to give evidence, including experts from the Voluntary and Community Sectors.

What is devolution?

After devolution, some of the UK Parliament's powers were transferred to Scotland to be managed by a new Scottish regional government. The Scotland Act 1998 (an Act of the UK Parliament) created a Scottish Parliament which has the power to make laws on a range of issues known as '**devolved matters**'. This transfer of powers from central to regional authority is called 'devolution'. The Scottish Parliament was convened (formally set up) in July 1999.

You can find out more about devolution and the devolved and reserved matters it created by consulting Schedule 5 of the Scotland Act 1998. The UK Parliament is currently considering the Scotland Bill that contains proposals to extend the powers of the Scottish Parliament. If



there proposals are approved by the UK Parliament, the Scottish Parliament could gain additional powers relating to various matters, including income tax and borrowing.

The Scottish Parliament

Under the Scotland Act 1998, the Scottish Parliament has the power to legislate on a range of issues which are called 'devolved matters'.

Devolved matters include:

- Health and social services
- Education and training
- Housing
- Local government
- Voluntary sector
- Economic development
- Area regeneration and planning
- Tourism
- Scots criminal and civil law
- Criminal justice and prosecution
- Civil and criminal courts, tribunals and legal aid
- Prisons
- Police and fire services
- Statistics, public registers and records

The Scottish Parliament is able to examine and debate both reserved and devolved policy areas, but it can only legislate (e.g. make, amend or repeal laws) on devolved matters. However, this split between reserved and devolved areas is often not clear cut: for example, aspects of immigration and asylum policies (reserved) and their enforcement are connected to devolved policy areas (such as access to a range of public services).

The Scottish Parliament is based in the Holyrood area of Edinburgh and is often referred to simply as 'Holyrood'. Its membership is set up in a similar way to the House of Commons at Westminster. Members of the Scottish Parliament (MSPs) are elected through a public vote, and the leading party assembles a Government headed by Ministers appointed by the First Minister (the Scottish equivalent of the Prime Minister). Again, Ministers have control over the Civil Servants who do much of the day to day work.



Unlike the House of Commons, not all MSPs represent one constituency each – there are also list MSPs who represent bigger regions and are voted in according to how many list votes a party receives during the election. So whilst people in your local area are represented in Holyrood by one constituency MSP from one party, they are also represented by seven regional MSPs who will belong to various parties. All MSPs have equal status in Holyrood.

Although most Scottish legislation comes from the Scottish Government, backbench MSPs and Committees in the Scottish Parliament can also put forward legislation, which will be scrutinised and voted on by the Parliament in the same way as Scottish Government proposed legislation.

Committees in the Scottish Parliament perform similarly to those in Westminster, examining policy areas in detail, investigating important issues and considering proposed laws. They may call upon people from outside Government to give evidence, including experts from the Voluntary and Community Sectors.

Equality Responsibilities in the UK and Scottish Parliaments

As mentioned in the section on reserved matters, the UK Government is responsible for setting equality laws in Britain (Northern Ireland is part of the UK but has its own equality law making powers). British equality laws are now condensed into one main piece of legislation, the **Equality Act 2010**. Briefly summarised, the Equality Act 2010 places responsibilities on employers, service providers and public bodies to ensure they don't discriminate against groups of people with protected characteristics (age, gender reassignment, disability, sex, pregnancy and maternity, marriage and civil partnership, sex, sexual orientation, race and religion or belief). It also places a *General Duty* on public sector bodies to ensure they eliminate discrimination and other conduct prohibited by the Equality Act 2010, advance equality of opportunity between different groups of people and foster good relations between different groups of people. This General Duty is enhanced at regional level by separate *Specific Duties* in England, in Wales and in Scotland.

The Government Equality Office is Westminster's equality department, which oversees the work of the **Equality and Human Rights Commission** (the body responsible for promoting and enforcing equality and human rights law).

The Scottish Parliament has to take account of equality issues in decision making processes because of the Equality Act 2010, however it holds relatively few powers in relation to



equalities. The Scotland Act 1998 allows the Scottish Parliament to work on 'encouragement (other than by prohibition or regulation) of equal opportunities, and in particular of the observance of the equal opportunity requirements' of existing law. The Scotland Act 1998 defines equal opportunities differently than the Equality Act 2010, as: 'The prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.'

The **Human Rights Act 1998** is another piece of Westminster legislation of relevance to migrants. It brings into force many elements of the European Convention on Human Rights and enables people to challenge actions of Public Sector bodies which breach someone's human rights, as it is unlawful for a public authority to act in a way which is incompatible with the Human Rights Act. Both the UK and Scottish Parliaments have to comply with the European Convention on Human Rights.

Key non-departmental public bodies

Non-departmental public bodies (NDPBs) are set up and funded by Government to do specific work. They have a role in Government processes and are linked to specific departments, but are independent from them and are not controlled by Ministers.

The Equality and Human Rights Commission (EHRC) is linked to the Government Equalities Office and has a separate office in Scotland. It works to eliminate discrimination, reduce inequality, protect and promote human rights and to build good relations, ensuring that everyone has a fair chance to participate in society. It provides information and advice, campaigns on equalities issues, seeks to influence legislation and policy, and supports key legal cases. Following a recent strategic review and ongoing cuts to its budget, it is likely that the EHRC will downscale or end much of its advice and campaigning work. With regard to human rights, it focuses on *reserved matters* which would include immigration and asylum issues.

Next to the EHRC, Scotland is the only one of the three British regions with its own (additional) Human Rights Commission, the **Scottish Human Rights Commission (SHRC)**, which focuses on *devolved matters*. The **SHRC** works to promote awareness, understanding and respect for human rights, and in particular to encourage best practice in relation to human rights, through education, training, awareness raising and research, and making



policy recommendations on human rights, and works closely with the EHRC. While the SHRC's protection powers include conducting inquiries, recommending changes to law, intervening in court cases, and entering places of detention, the SHRC does not provide advice for individuals and cannot take legal cases for individuals.

Other key NDPBs at UK level include the **Office of the Immigration Services Commissioner** (which regulates immigration advice services) and the **Migration Advisory Committee** (which advises the Government on migration issues).

Local Government

The Scottish Parliament has responsibility for the structure of local government and related legislation and policy. Responsibility for control of local authority spending is devolved, but support for their expenditure and capital remains in the funding block from Westminster. The Scottish Parliament can alter the existing allocation of funding to Scotland's 32 local authorities and can control local authority expenditure, e.g. through capping. The Scottish Parliament will normally not interfere in local decision making, although if procedures are not being followed properly, MSPs may be willing to intervene (for example, in the past they have intervened to halt a series of proposed local hospital closures).

There are 32 **Local Authorities** (sometimes called Councils) in Scotland. These are led by Councils made up of elected Councillors who represent the interests of voters in the various Council Wards within the Local Authority area. The Councillors have decision making powers over local public services, local laws ('byelaws') in a very limited number of policy areas and Local Authority departments. Local Authorities usually operate a small number of committees to look at specific issues.

Other Local Bodies

Some levels of decision making within local public services happen within the services themselves, for example within **Health Boards, Police Forces or Education Authorities** (which sometimes cover more than one Local Authority area). Whilst you can still contact your local Councillor about issues with these bodies, it can be quicker/more effective to approach the head of the relevant department first.



European Union and Parliament

The Scottish Parliament has an important role in relation to European Union (EU) institutions. The European Union develops policy for member states on migration and asylum issues, including the Common European Asylum System which is expected to be completed in 2012. While UK Ministers lead delegations to the EU and are responsible for discussion and negotiation, the Scottish Government can lead on appropriate issues.

The EU has quite a complex structure. Its broad priorities are set by the European Council, which brings together national and EU-level leaders; elected Members of the European Parliament (MEPs) represent European citizens in the **European Parliament** (there are six Scottish MEPs); the interests of the EU as a whole are promoted by the **European Commission**, whose members are appointed by national governments; and governments defend their own countries' national interests in the **Council of the European Union**.

The Scottish Government's representative office in Europe, Scotland House, opened in Brussels in 1999. The office supports the Scottish Governments' work in Europe and also houses Scotland Europa (led by Scottish Enterprise). The significant funding power of the EU through the European Social and Regional Development Funds is also of major importance to many Scottish voluntary organisations.