

**Submission calling for an Inquiry into relationship between Scottish criminal justice institutions and the Home office's Immigration enforcement, Border force and UK Visa and Immigration activities in Scotland**

1. The Scotland Act 1998 enables the Scottish parliament to have legislative competence over policing, criminal prosecutions, and prisons. The UK parliament has legislative competence over immigration and asylum. In practice, these overlap. This should entail [working relationships](#) between the Home office's Enforcement, Border force and Visa and immigration functions with key Scottish criminal justice institutions. There is a public interest that these relationships are in the public domain. We recommend a Justice Committee inquiry to understand what these relationships are, where responsibility sits, and practices involved.
2. There is little public information on what these working relationships comprise or about the policies, procedures or information-sharing protocols that underscore them. Since devolution, we know of no Scottish parliament scrutiny focused only on this relationship, or of any thematic immigration reports by the Scottish inspectorates for policing, prosecution, and prisons. Immigration is in some of these inspectorates' reports but as a [mention](#) and not as a theme or focus. We recognize there is some limit on the extent these inspectorates can inquire into this as a reserved issue, but we understand there is scope for that.
3. Whilst not by design, we think the result is a transparency and accountability gap. This is particularly to Home office immigration control and enforcement operations in Scotland. As far as there is no clarity on how the Home office operates vis-à-vis Scotland's criminal justice institutions, there is space for misperception and a concomitant draining of the public confidence necessary to effective policing, prosecutions and prisons policy. An [example](#) is those subject to immigration enforcement raids may not distinguish between Home office and Police officers. It is in the interests of the Police to minimize the risks of such.
4. Decisions by the Home office or in Scotland's criminal justice sector can impinge on liberty and life futures, in far-reaching and adverse ways. These decisions include [arrests](#) and [custody, prosecutions](#) and conviction, [imprisonment](#) and [detention](#) as well as [removals](#) or [deportations](#). Wrong actions may limit rights of leave to remain and settlement. Brexit is likely to [risk many EU citizens](#) also having insecure immigration status and destitute. Rough sleepers from EU countries were [subject to Home office enforcement](#), until that policy was ruled [unlawful](#), including in [Edinburgh](#). However, recent [changes](#) to [Immigration rules](#) will make post-Brexit settled status harder to get. The 'immigration control' [exemption](#) in the Data Protection Act 2018 limits key data access rights for those subject to such control. In the midst of status uncertainty and destitution, it will be much harder for those affected to get information held on them by public bodies, in order to prevent execution of detention and removal plans.
5. Individuals with [insecure immigration status](#) are frequently in extremely vulnerable predicaments. The roots of this vulnerability may stem from displacement in their home countries through persecution or for other reasons such as trafficked exploitation or simply they are fleeing severe or absolute poverty or social marginalization. Moreover, this vulnerability may arise from, or be severely aggravated by, destitution in Scotland and related adverse mental health and trauma and exploitation. Language support needs, poor social networks, and low awareness of their legal rights deepen this vulnerability.
6. Scotland's criminal justice institutions rely on maintaining public confidence. Home office operations should not undermine this. That will happen if this transparency gap persists. It is as important that police, prosecution and prison services operate on a clear understanding of the distinctive vulnerabilities stemming from insecure immigration status. For example, an ostensible immigration offender may [actually be a vulnerable person seeking refugee protection seeking entry](#) - necessarily due to flight - on false documents or be a trafficking survivor convicted for drugs offences when they have been compelled to do.
7. We welcome you taking evidence on the police's role in the immigration process. We request this extend into a wider inquiry. This will enhance, via transparency, the Home office's-Scottish criminal justice sector relationship and serve the public interest.