JUSTICE

Immigration and Asylum Bill Public Bill Committee Evidence

Committee Stage, House of Commons

10 September 2026

Introduction

30. JUSTICE is a law reform and human rights organisation working to create a fair justice system within everyone's reach.

31. This evidence addresses the Immigration and Asylum Bill (the "**Bill**") in advance of Committee Stage in the House of Commons, starting on 15 September 2026. In this evidence, we set out our opposition to the abolition of the independent immigration tribunal, analyse the Article 8 immigration changes for their compatibility with the ECHR and highlight further backsliding on the UK's approach to modern slavery and human trafficking.

Abolishing independent judicial oversight of immigration decisions

32. Part 1 of the Bill replaces the First-tier Tribunal (Immigration and Asylum Chamber) ('the **Tribunal**') with a new immigration appeals body ('**IIAA**'), which instead of being made up of independent judges will be controlled significantly by the Secretary of State. This will reduce legal accountability for Home Office decision-making, and it will not solve the appeal backlog.

The importance of the independent judiciary

33. Courts and tribunals, overseen by independent judges, are core to the rule of law. They ensure that the executive (in this instance, the Secretary of State for the Home Department) acts within the laws set by Parliament. As the Supreme Court said in *UNISON*, courts (and tribunals) do not '*merely perform a public service like any other, they exist in order to ensure that the laws made by Parliament, and the common law created by the courts themselves, are applied and enforced.* ***That role includes ensuring that the executive branch of government carries out its functions in accordance with the law***' (emphasis added).[1]

[1] *UNISON v Lord Chancellor* [2017] UKSC 51, para 68.

34. Reducing the role of the courts in overseeing immigration decisions would put Home Office decisions above full legal accountability in cases involving fundamental human rights: children being separated from their parents and vulnerable people facing to torture or death. Whilst there will be a right to appeal to the Upper Tribunal, this will only be on points of law and will require permission.

35. It also sets a dangerous precedent. Would we want the government making decisions on our taxes or detention under the Mental Health Act without the right to challenge that decision before an independent judge? Would we be reassured if a new body was being set up, without independent expert judges, but whose members were appointed by HMRC or the medical clinician involved who could also direct the case to be heard quickly?

The IIAA's lack of independence

36. Despite its name, our concerns have not been allayed about the independence of this new body. At present, Tribunal judges are appointed by the independent Judicial Appointments Commission, must have a legal qualification and at least five years' experience of practising law.[2] Their independence is protected by the Constitutional Reform Act 2005.[3] Tribunal rules are set by the Tribunal Procedure Committee, which includes the Senior President of the Tribunals or a person nominated by them, and members appointed by the judiciary and Lord Chancellor.[4]

37. The proposed IIAA would have *nowhere near* the same level of independence as the Tribunal. The Secretary of State would have significant control over the IIAA's structure and the adjudicators themselves. This is especially problematic when the Home Secretary will be a party, whilst having significant control over the IIAA's institutional structure, personnel, funding, rules, and case management, in appeals brought against decisions they have made:

    a. The Chair and Professional Standards Officer are to be appointed by the Secretary of State (Clause 2(2));

    b. The initial Chief Executive and Chief Appeals Officer are to be appointed by the Secretary of State (Clause 2(3)), and thereafter by the Chair, who, as above, will be appointed by the Secretary of State (Clause 2(4)). The Chief Executive will appoint IIAA adjudicators and oversee training (Clause 2(5));

    c. The IIAA Procedural Rules Board, which sets the rules for the new body, consists of the Chief Executive, the Chief Appeals Officer, the Professional Standards Officer and any appointees by the Chair (Clause 5). This means

[2] Or *'have experience in law which makes the person as suitable for appointment'* as if they had that experience. Schedule 2, Tribunals, Court and Enforcement Act 2007.

[3] Section 3, Constitutional Reform Act 2005.

[4] Schedule 5, Tribunals, Court and Enforcement Act 2007

that the IIAA Procedure Rules Board will be completely made up of Ministerial appointees, or those chosen by such direct appointees;

d. The Secretary of State has a wide regulatory power to set out time periods for the IIAA deciding bail applications, appeals, or taking 'any other steps in proceedings' (Clause 8(1)). This includes specifying the lengths of extensions granted, where compliance with the prescribed time period is not reasonably practicable or 'in the interests of justice' (Clause 8(2));

e. Deepening the inequality of arms, one party, the Secretary of State, may set out the process for making and deciding expedition requests in regulations and may make such requests 'in the public interest', which the IIAA may decline only if not reasonably practicable or not in the interests of justice (Clause 9);

f. The Secretary of State has a considerable 'Henry VIII' power to make regulations which would amend, repeal, or revoke primary legislation to make clear that, in relation to a particular law, the IIAA is or is not to be treated as a tribunal (Clause 16); and

g. Adjudicators and other members of the IIAA may be paid, and remuneration, pension, allowances, and terms of employment are to be set by the Home Secretary, who may attach conditions to that funding (Sch 2, paras 4, 5, and 12).

38. These arrangements undermine the prospect of a fair hearing from the outset. While the Secretary of State would be a party to proceedings, she would also have far-reaching influence over the adjudicative body itself and the appellate process.

39. No government department should be looking to reduce independent accountability, but it is of particular concern that the Home Office is seeking to do so. It has only been a few years since the Windrush Lessons Learned Review found that, within the Home Office, there was a *'risk of cases being processed without adequate quality control and safeguards'* and that there was a *'"target dominated" work environment and low-quality decision-making'*.[5] The UNHCR's recent audit of asylum interviews in the UK found that, in nearly half of cases reviewed, the interview ended without the asylum seeker's credibility being *'adequately explored or addressed'*.[6] Around 40% of asylum appeals are granted at the Tribunal.[7]

40. Tribunal judges play an important role in holding the Home Office accountable; the new IIAA risks the Home Office "playing with a loaded deck", where it controls who

[5] Wendy Williams, 'Windrush Lessons Learned Review' (March 2020), p 13.

[6] UNHCR, 'Asylum Interviews in the UK: Audit Findings and Recommendations' (March 2026).

[7] Free Movement, 'Asylum appeal backlog rises to 87,450 cases' (11 June 2026).

will make the decision and what the rules of the appeal are. The process as prescribed by statute, does not ensure fairness or independence.

The IIAA's overriding objective

41. The IIAA has a duty to decide appeals and bail applications with *'a view to ensuring that justice is done'* (Clause 1(4)). However, its overriding objective is different from that of the Tribunal, which is to deal with cases justly and fairly.[8] The IIAA must only *'**aim** to be accessible, fair, and independent'*, meanwhile, it *'**must** have regard to the public interest, and in particular to the fact that the IIAA operates as a key part of the immigration and asylum system'* (Clause 1(4)-(5), with emphasis added).

42. Although the precise intended effect of this qualification is unclear, its inclusion is significant. It appears to recast fairness, accessibility, and independence as matters to which the IIAA need only aspire, while imposing a firmer obligation to take account of the public interest, when exercising its functions, the primary of which is its role in the wider asylum and immigration system. This shifts the overriding objective away from the safeguards necessary for a fair hearing and towards institutional alignment with the Government's immigration and asylum policy objectives.

Decisions immune from judicial review

43. The Bill also seeks to oust judicial review of the IIAA, retaining only the possibility of the IIAA reviewing its own decision or an appeal to the Upper Tribunal on any point of law (Clause 1(8)).

44. Currently, procedural, ancillary, or preliminary decisions made in relation to statutory appeals in the Tribunal may be challenged by way of judicial review. By contrast, the Bill would replace that safeguard with an internal review mechanism and an appeal to the Upper Tribunal. This has concerning effects. For example, if judicial review is ousted in relation to preliminary matters, a decision by the IIAA to not hear an appeal out of time can only be challenged by review of the IIAA, as proceedings will not have been instituted until an extension is granted.[9] Similarly, if a preliminary decision is taken by the IIAA, on the papers, asserting that it does not have jurisdiction to entertain an appeal, the decision is not appealable to the Upper Tribunal.[10] A review may be initiated by the IIAA itself, or by an application of any party, including the Home Secretary. It may result in errors being corrected, reasons being amended, or the decision being remade by an IIAA adjudicator, with new procedure rules made by a new Board of executive (or *de facto* executive) appointees to determine how

[8] The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, section 2.

[9] *R (Akinola) v Upper Tribunal* [2021] EWCA Civ 1308.

[10] See Upper Tribunal (IAC) and First-tier Tribunal (IAC), JOINT PRESIDENTIAL GUIDANCE 2019 No 1: Permission to appeal to UTIAC, para 20.

these expansive powers to change decisions taken are to operate in practice (Clause 6; Sch 3, para 6).

45. This is a materially weaker safeguard. Once a decision has been made, there is an inherent risk that the same institution will approach the review defensively. As Underhill LJ recognised, *'human nature being what it is, the decision-maker may unconsciously and in good faith tend to be defensive over the decision to which he or she has previously come.'*[11] That risk is heightened where adjudicators are not required to have the legal or judicial training and experience necessary to approach the matter with an open mind.[12]

46. The Bill also retains the current ouster of *Cart* judicial reviews introduced by the Judicial Review and Courts Act 2022 (Clause 7(3)), meaning that an applicant cannot challenge, by way of judicial review, a decision made by the Upper Tribunal to refuse permission to appeal, except on very limited grounds.

47. The retained ouster of *Cart* judicial review is particularly concerning in the context of the proposed IIAA. Where the initial appeal decision may be made by an adjudicator who is not required to hold a legal qualification, the Upper Tribunal's consideration of an application for permission to appeal may represent the only judicial consideration of whether the substantive decision on appeal raises an arguable error of law. The combined effect is to narrow external judicial oversight at the same time as reducing the guarantees of legal expertise and institutional independence at the first appeal stage. This places a heavy burden on the Upper Tribunal, when reviewing grounds of appeal drafted by potential litigants-in-person who may struggle to enunciate errors of law, and it risks leaving applicants without a genuinely effective means of correcting illegality in IIAA decisions.

The importance of legal expertise

48. Immigration law is one of the most legally complex areas of domestic law. The Law Commission has previously said, whilst recommending simplification, that the cost of complexity is *'mistakes, slower decision-making and costlier administration, and an increased number of administrative reviews, appeals and judicial reviews'*.[13] The simplification project undertaken by the Home Office is still not complete, and there are regular additions of new Appendices to the ever-growing Immigration Rules, 11

[11] *Balajigari v SSHD* [2019] EWCA Civ 673, per UnderhillJ at [60]; Zoe Bantleman and Alex Papasotiriou, 'The new Immigration and Asylum Bill, a broken time machine,' (EIN, July 2026).

[12] Zoe Bantleman and Alex Papasotiriou, 'The new Immigration and Asylum Bill, a broken time machine,' (EIN, July 2026).

[13] Law Commission, 'Simplification of the Immigration Rules: Report ' (13 January 2020)

Statements of Changes to the Rules in the last two years through thousands of amendments, and annual Bills changing the law at the level of primary legislation.

49. Yet, the proposed new adjudicators will not be required to have any specific knowledge of immigration, asylum or nationality law, legal background or legal qualification.[14] Despite this, they will be required to make decisions on issues as fundamental as whether an asylum-seeker faces torture/ death on return to their home country, whether a child should be forced to leave the UK to a country they have never been before or whether an individual's liberty should be curtailed in immigration detention.

50. Adjudicators without legal experience or qualifications are not required by the Bill to sit with legally qualified adjudicators or be provided with legal advice through other means. Currently, in the Tribunal, the Home Secretary is frequently represented by a Home Office Presenting Officer, who is not required to hold a legal qualification or have experience,[15] and applicants are often unrepresented.[16] There is a real risk that many cases heard before the IIAA will not involve any individual with the necessary expertise in immigration, asylum, or nationality law to cover appeals from protection and human rights to citizens' rights and deprivation of citizenship. In complex immigration, asylum and nationality cases, a fair hearing requires more than an opportunity to be heard; it requires a decision-maker with independence, expertise, and legal competence to scrutinise the evidence and apply the correct legal test.

51. Extensive training will be required and is unlikely to be sufficient. When Home Office asylum decision-makers were given 22 weeks training, the ICIBI heard that it was *'inadequate'* and did *'not provide them with the necessary information to perform their job effectively'.*[17] Not only will adjudicators have to get up to speed with complex immigration and human rights law, but they will have to be able to approach traumatic evidence in a sensitive manner, handle vulnerable witnesses, give proper weight to expert evidence and conduct hearings with interpreters. A perversity is that immigration advisors preparing appeals must demonstrate their competence by passing an assessment,[18] but, under the new system, adjudicators who will make decisions on appeals will not have to demonstrate knowledge of immigration law.

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[14] There are no requirements for executive adjudicators and senior adjudicators may either be a qualified person in England, Wales, Scotland or Northern Ireland who has practised for two years, or 'have experience in law-related activities which, in the opinion of the Chief Executive, makes them as suitable for appointment', per Clause 2(8).

[15] Independent Chief Inspector of Borders and Immigration, 'An inspection of the Home Office Presenting Officer function' (January 2021), §5.12.

[16] Justice Committee, 'Access to Justice: Legal Aid' (HC 541, 17 July 2026), §90. Note that 63% of people are unable to access a legal aid provider for immigration and asylum issues.

[17] Independent Chief Inspector of Borders and Immigration, 'An inspection of asylum casework ' (June – October 2023) p34 and 35.

[18] GOV.UK, 'How to become a regulated immigration advisor' (4 September 2025).

52. Whilst it is true to say there were adjudicators prior to the establishment of the Tribunal, who were not required to be legally qualified, this is not the full picture. They were usually barristers or solicitors of several years' standing. The House of Commons Library highlights how the decision in 2000 to ensure all adjudicators were legally qualified *'reflects the fact that all adjudicators appointed since 1987 had such qualifications, despite not formally requiring them'*.[19] Whilst lay members have been permitted in the Tribunal previously, they were not regularly used and sat with legally qualified members.[20]

53. We would also note, given the comparison that has been made, that magistrates sit with specialist legal advisors when hearing criminal cases. There is also, at present, an automatic right of appeal to the Crown Court.[21] Given the existing legal aid deserts across the UK, and paucity of specialist lawyers able to advise in human rights and asylum appeals, there is a risk that if specialist legal advisers were used in the Tribunal, lawyers would be drawn away from the lower paid work of advising and preparing individuals in their appeals (compounding the existing backlogs and legal aid deserts).

The IIAA will make the appeal backlog worse, not better

54. We share the Government's urgency to address the appeal backlog. However, the IIAA will likely exacerbate, rather than solve, the situation. We note that even the Home Office's impact assessment has not been able to estimate the costs of setting up the IIAA or quantify the benefits of this policy.[22]

55. Replacing 350 experienced immigration judges will not make the system more efficient, but it will likely have the opposite effect. It will take significant time to properly train the new adjudicators and there will likely be a significant transition period before the IIAA is operating at full capacity. This is anticipated by the Home Office, which provides for a period when the Tribunal operates alongside the IIAA (clause 15).

56. When Australia recruited immigration adjudicators without legal qualifications, it was *'widely acknowledged'* this led to significant delays in appeals and an increase of asylum appeal backlogs. Australia has recently reverted back to a system of adjudicators having to be legal practitioners of at least five years (or have five years of equivalent expertise).[23] In Denmark, cited by the Home Office as a key influence

[19] House of Commons Library, 'History of asylum appeals in the United Kingdom ' (6 February 2026).

[20] Hansard, 'Tribunals: immigration ' (30 October 2007)

[21] We note that the Courts and Tribunals Bill would change this, but the proposed test threshold would be lower than the 'reasonable chance of success' required for permission at the Upper Tribunal in an appeal.

[22] Immigration and Asylum Bill Impact Assessment, p7 – 12

[23] UNHCR, 'International standards and core procedural safeguards to be considered in the design of the new appeals body' (May 2026), p10

for these reforms, an independent judge always sits as part of the panel or alone in accelerated cases.[24]

57. It is welcome that there will be full appeal rights on points of law to the Upper Tribunal, which we called for in our consultation response. Employing hundreds of inexperienced adjudicators to conduct complicated legal hearings, with vulnerable applicants, risks causing a significant backlog at the Upper Tribunal stage. Expert Tribunal judges are more likely to get appeals right the first time, reducing the number of unnecessarily re-heard appeals after an Upper Tribunal finds an error of law.

58. Despite this, we are concerned that many without legal advice will struggle to access justice in the IIAA. We note there is nothing in this Bill about early legal advice – despite the Home Office saying it was an important focus in the consultation and the Home Secretary saying it would be *'embedded as a core part of these reforms'*.[25] 2024 research by the Law Society found that 63% of the population did not have access to an immigration and asylum legal aid provider in their area.[26] Other research has found a gap of at least 57% between legal aid provision and eligible asylum legal aid need.[27]

59. The backlog will only be solved by improving the Home Office's initial decision-making. The current grant rate for immigration appeals is 39%, but 26% of appeals are withdrawn (the majority of which are likely due to the Home Office agreeing to reconsider their decision).[28] In 2023/24, only 52% of asylum decisions sampled by the Home Office met their internal quality assurance process.[29] Whilst the Tribunal could be more efficient, especially with the use of technology, this should be done in conjunction with HMCTS and the judiciary. Frontloading early legal advice for asylum claims – as is done in Switzerland – has reduced delays and the number of successful appeals.[30]

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[24] Flygtningenævnet, 'General information regarding the Danish Refugees Appeals Board', accessed 10 September 2026.

[25] Rt Hon Shabana Mahmood MP, 'Letter to Justice Committee Chair: Asylum and Returns Policy Statement' (13 January 2026)

[26] The Law Society, 'Immigration and asylum – legal aid deserts' (21 February 2024).

[27] Dr Jo Wilding, 'No Access to Justice 2: Mapping the UK's continuing immigration and asylum legal advice crisis' (Justice Together, 2025), p 12.

[28] Ministry of Justice, 'Tribunal Statistics Quarterly: January to March 2026' (11 June 2026).

[29] Lizzie Dearden, 'Home Office says only half of UK asylum decisions meet its quality standards ' (The Guardian, 8 December 2024).

[30] Jonathan Thomas, 'Swiss Role Model?' (Social Market Foundation, March 2026).

Claim Notices

60. The Bill announces that there will be new 'Claim Notices', for those liable to deportation or removal, where any reason/grounds for remaining in the UK will need to be given in a time period to be set by the Home Secretary (clause 11). There is to be a 'late claims process' for those who respond to a 'claim notice' after the deadline, with the IIAA prioritises such appeals (clause 12). The Home Office have stated that such claims will be decided on within a week and then the IIAA will be under a statutory requirement to prioritise such appeals.[31]

61. Whilst there is limited detail, we are concerned that this may result in a form of detained fast track appeals, previously found to be unlawful by the Court of Appeal on the basis that they were *'systemically unfair and unjust'* and that *'justice and fairness should not be sacrificed on the altar of speed and efficiency'*.[32] We would highlight that the Court of Appeal in that case did take into account that independent, impartial and specialist Tribunal judges would be hearing these cases, which would not be the case for the IIAA (see above).

Temporary refugee protection

62. Clause 21 of the Bill replaces the separate categories of refugee status and humanitarian protection with a single 'protection status' under the Government's new Core Protection model.[33] This is in addition to the Government introducing a new system where those granted protection receive only 30 months' leave at a time and a 20-year route to settlement.[34] The effect is to make protection status legally and practically precarious for a prolonged period, until refugees are able to meet the requirements of the (as yet unannounced) Protection and Study work route.

63. Article 34 of the Refugee Convention requires Contracting States to *'as far as possible'* facilitate the assimilation and naturalisation of refugees, including making every effort to expedite naturalisation proceedings and reduce associated costs.[35] We are concerned that the new system will undermine assimilation and naturalisation, with individuals facing up to eight status' reviews over 20 years.

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[31] Immigration and Asylum Bill ECHR memorandum, p4; Clause 12(2).

[32] *The Lord Chancellor v Detention Action* [2015] EWCA Civ 840, para 49.

[33] Home Office, 'Restoring Order and Control: A statement on the government's asylum and returns policy' (November 2025).

[34] Home Office, 'Statement of changes to the Immigration Rules: HC 1691' (6 March 2026). Under the previous system, refugees were granted 5 years' protection and allowed to bring their families, followed by an application for indefinite leave to remain.

[35] *Convention Relating to the Status of Refugees* (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, art 34.

UNHCR has stated that a *'refugee's status should not in principle be subject to frequent review to the detriment of his sense of security'*, which supports the view that refugee protection should ordinarily carry a secure legal status.[36] The Government should justify why the earlier, more accessible route is no longer possible and how this new policy is consistent with Article 34 of the Refugee Convention.

Article 8 ECHR Reform

64. Article 8 of the European Convention on Human Rights ('ECHR') protects the right to a private and family life. It is a qualified right; it can be interfered with by public authorities so long as that interference is lawful and proportionate. In the immigration context, the control of immigration and deporting those who are a risk to public safety are both legitimate aims which may justify interference with respect for private and family life.

65. The Government is, of course, entitled to seek to clarify domestic law around Article 8 in immigration cases and act within its 'margin of appreciation'. However, the UK has obligations under the European Convention on Human Rights ('**ECHR**'), including to abide by European Court of Human Rights' (**ECtHR)** judgments made against it[37], and must act within the wide discretion set out by European Court of Human Rights' ('**ECtHR**') caselaw. We are concerned that the changes in the Bill weaken Article 8 protections and risk falling outside this discretion. It is not in the UK's interest to pursue a policy which risks being successfully challenged in the ECtHR because it will cause significant legal uncertainty in an already complex area and litigation is likely to come at an avoidable cost to the public purse.

66. The existing legal framework, set out in sections 117A-D of the Nationality, Immigration and Asylum Act 2002, is *'intended to provide for a structured approach to the application of article 8 which produces in all cases a final result which is compatible with, and not in violation of, article 8.'*[38] However, as the Supreme Court emphasised repeatedly, in the case of *Rhuppiah*, *'insofar as the legislation is intended in all cases to produce a result compatible with the article, we will need to find somewhere within it provision for a degree, no doubt limited, of flexibility.'*[39] The instruction of Parliament to judges is to *'have regard'* to the considerations set out in

[36] UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, §135.

[37] ECHR, article 46.

[38] *Rhuppiah v Secretary of State for the Home Department* [2016] EWCA Civ 803, para 36, quoting Sales LJ (as he then was).

[39] Ibid.

sections 117A to 117C.[40] This provides a small degree of flexibility to ensure human rights compliance. However, the restrictive and prescriptive approach, taken by this Bill, seeks to narrow the in-built flexibility contained in these sections of the law.

Limiting the definition of the core family unit (clause 18)

67. We are concerned that the definition of 'core cohabiting family' in clause 18(4), inserting a new section 117AA in the Nationality, Immigration and Asylum Act 2002, which serves as the gateway for a court or tribunal determining engagement of Article 8 ECHR, raises issues of compliance with the UK's obligations under Article 8.

68. First, it states that an adult does not 'normally' have a family life with another adult unless they live together as spouses, civil partners, or partners, or there are additional elements of dependence beyond normal emotional ties between the two adults.[41] This provision falls short of codifying the Strasbourg principles on the existence of family life, despite the Government's assertion to the contrary in its ECHR memorandum.[42] In the context of the expulsion of settled migrants, the ECtHR 'has made an exception for young adults who are still living with their parents and have not yet started a family of their own... in that particular situation, dependency is assumed.'[43]

69. Second, we recognise that the use of 'normally', together with the need to only 'have regard' to these considerations, preserves the possibility of finding family life beyond these prescribed circumstances. However, by stating that factors listed in the new section 117AA(5) do not independently constitute an additional element of dependency, the statutory framework appears intended to limit, if not unduly foreclose, the fact-sensitive assessment, which must be undertaken on a case-by-case basis. While these factors may be considered as part of the public interest question (i.e. when undertaking the balancing exercise), if Article 8 is found not to be engaged, under this more restrictive statutory framework, this question may never be reached. This places significant responsibility on the shoulders of legally unqualified adjudicators to appropriately interpret and apply the law, to ensure the existence of family life is recognised.

[40] Ibid, para 49; s 117A (1B), inserted by Cl 18(3), and s 117A(2).

[41] This is derived from Strasbourg case law and has been recently confirmed by the Court of Appeal. See *Kumari v the Netherlands* App no 44051/20 (ECtHR, 10 December 2024), para 35; IA and others v Secretary of State for the Home Department [2025] EWCA Civ 1516, para 50.

[42] Home Office, 'Immigration and Asylum Bill European Convention on Human Rights Memorandum' (30 Jun 2026), para 25.

[43] *Kumari v the Netherlands* App no 44051/20 (ECtHR, 10 December 2024), [36]. The Court of Appeal made reference to this in *IA and others* at [50], although it was not the focus of the *ratio*.

Reducing the weight of family relationships when someone enters without leave or has precarious immigration status (clause 19).

70. Clause 19 amends the public interest considerations in section 117B of the Nationality, Immigration and Asylum Act 2002, which courts and tribunals must apply when deciding whether an interference with a person's Article 8 rights is justified.

71. In *Rhuppiah*, the Supreme Court held that *'the provisions of section 117B cannot put decision-makers in a strait-jacket which constrains them to determine claims under article 8 inconsistently with the article itself.'*[44]

72. Nevertheless, we are particularly concerned by Clause 19(4). It substitutes section 117B(4), providing instead that *'no weight'* is to be given to private or family life established while a person requires leave but does not have it, or obtained it by deception, or is in "serious" breach of a condition attached to their leave, with "serious" left undefined. It thus reduces to nought the existing small degree of in-built flexibility. Whilst the ECtHR has said the weight *'to be attached to the competing considerations, in striking a fair balance, falls within the margin of appreciation of the national authorities'*, that margin of appreciation is not unlimited.[45] Clause 19(4) in assigning "no weight" to certain private and family life, would be out of step with Strasbourg and domestic jurisprudence, if it were to preclude consideration of exceptional circumstances relevant to a private and family life, for example, formed when a person did not have regular immigration status in the UK.

73. Further, the ECtHR has held that even where domestic law assigns fixed weight to public interest factors, the decision-maker must still be able to fairly balance the individual's interests against the public interest, having regard to their particular circumstances.[46] A statutory rule that leaves no room for that individualised assessment risks falling short of this requirement.

74. The "no weight" provision may significantly impact the rights of children. Courts should be able to consider the impact of an immigration decision on a child's best interests, and, as the Supreme Court said in 2013, a *'child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent'*.[47]

Limiting the legislative definition of what is in a child's best interest (clause 19).

75. The Bill reduces the scope of when it can be argued that a child should not have to leave the UK, due to their parent's lack of immigration status. This applies even in cases where the parents do not have criminal convictions. Previously, the public

[44] *Rhuppiah,* para 49; also reiterated in *NA (Pakistan) v Secretary of State for the Home Department* [2016] EWCA Civ 662, para 38.

[45] *Agyarko v Secretary of State for the Home Department* [2017] UKSC 11, para 46.

[46] *Unuane v the United Kingdom* App no 80343/17 (ECtHR, 24 November 2020).

[47] *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74, para 10.

interest test meant the Home Office could 72. remove a parent if it was 'reasonable' for the child to leave the UK with their parent. The new test is much more prescriptive. It will be unreasonable for a child to be expected to leave the UK only if:

(i) They would not receive **any** education in the new country; or

(ii) There would be 'very significant obstacles' to their ability to adapt or integrate; or

(iii) The relocation would have a 'very significant and long-lasting adverse effect on the child'.

76. Similarly, for children who would remain in the UK, it would only be disproportionate to remove their parent if there will be a 'very significant and long-lasting adverse effect on the child'. Whilst this will likely be subject to considerable (and complex) litigation, it tightens the circumstances in which children in the UK can argue their rights would be breached by either the removal of their parent, or the child having to leave the UK. It appears to suggest to judges that very significant harm to the child is in the public interest if it is not long-lasting, even if it is contrary to the best interests of a child (which the Home Secretary has a duty to safeguard and promote).[48]

Reduces the threshold at which an individual must meet the 'unduly harsh' test (clause 20).

77. Currently, there are separate legal tests for when a foreign national offender, relying on their Article 8 rights, can be deported. These are based on the length of sentence received. For those sentenced to at least 12 months, individuals must meet either the *'very significant obstacles to integration'* test (for those who had been lawfully in the UK for most of their life) or the *'unduly harsh'* test (for those with partners or parents with children). For those with a sentence of at least four years imprisonment, there are required to be additional *'very compelling circumstances'*.

78. Clause 20 removes that distinction. For all those liable for deportation, the individual will have to meet either the 'very significant obstacles to integration' test, the 'unduly harsh' test, or the 'very compelling circumstances' test. The Bill also removes the requirement that a person must have received a 12-month sentence of imprisonment and significantly expands its application to a person liable to deportation where conducive to the public good or recommended by a court.[49] It then flattens out the application of the exceptions, so that all three apply, regardless of the length of a person's sentence. Over and above proving the existence of an exceptional circumstance (which is currently determinative of the proportionality exercise and reflective of the public interest), under the new proposed framework, a person must *additionally* prove the interference cannot be justified by the public interest in deportation. It is wholly unclear what must be additionally proven to satisfy this new,

[48] Borders, Citizenship and Immigration Act 2009, section 55.

[49] Immigration Act 1971, section 3(5) (a) or (6); Cl 20(4).

further public interest hurdle. However, the new section 117C(3) suggests that a court or tribunal must have regard to the consideration that the *'effect of a person's deportation will be disproportionate if (and only if)'*, both of these hurdles are overcome.[50]

79. The UK already has very strict Article 8 rules, especially for deportation cases. Whilst making clear that ECHR signatories have the power to deport foreign national offenders, and a significant margin of appreciation to assess these issues, the ECtHR has emphasised that states must consider the full range of circumstances in relation to an individual's private or family life before making a deportation decision, to ensure it is proportionate.[51]

80. In particular, the best interests and well-being of children must be properly considered.[52] In *Unuane v UK*, the ECtHR held that the 'unduly harsh' test was compatible with Article 8 on the basis that it permitted (even through the lens of exceptional or very compelling circumstances) the Home Office and courts to consider all relevant factors about a person's private or family life.[53] The current scheme has been upheld because it preserves space for an individualised proportionality assessment. Overhauling that scheme risks breaching Article 8 and increasing both domestic and Strasbourg litigation.

81. We urge Parliamentarians to scrutinise the human rights compatibility and consider the necessity of these proposals. In 2014, the UK Government attempted to legislate Article 8 public interest considerations in the immigration and deportation context. Returning to this legislative activity 12 years later will only give rise to further litigation, and may fail to deliver the certainty sought by the Government.

Modern Slavery Provisions

82. The Bill changes how the UK will identify and support victims of human trafficking and modern slavery. We are particularly concerned about the changes to credibility and the compatibility of the proposals with the Council of Europe Convention on Action against Trafficking ('**ECAT'**).

Credibility factors (clause 36)

83. The Bill states that a competent authority must take, as damaging a person's credibility delay in making a claim, delay in providing relevant information, provision of inaccurate or inconsistent information, omission of relevant information or

[50] Cl 20(3), s 117C(3), emphasis added.

[51] *Boultif v Switzerland 2001 App No. 54273/00.*

[52] *Üner v The Netherlands, 2006 App No. 46410/99.*

[53] *Unuane v UK* 2020 App No. 80343/17.

provision *'strikingly similar'* to another person claiming to be a victim. Any information provided in response to a 'claim notice', after the claim notice deadline, is also to be treated as a delay damaging credibility (clause 36(5)). Whilst this will not apply if there are good reasons for the delay, omission, or provision, it is concerning that the starting point for decision-makers is to conclude that it is damaging.

84. The Government's ECHR Memorandum asserts that *'decision makers must continue to assess all evidence fairly, including reasons for late disclosure'*.[54] However, we remain concerned that the requirement to make an adverse credibility finding risks breaches of the UK's positive obligation under Article 4 ECHR to identify and protect potential victims of trafficking and to investigate credible claims.[55] Article 13 ECAT provides for a recovery and reflection period precisely because early disclosure is often unrealistic for trafficking survivors.

85. Home Office guidance, at present, makes clear that victims can have post-traumatic stress disorder and/or trauma which can result in disclosure which is *'often delayed'*, that *'a delay in disclosing facts should not be viewed as manipulative or taken to mean these facts are untrue'*, that memories from traumatic events are not recalled in the same way as ordinary memories, and that traffickers may provide stories for victims to tell if approached by the authorities.[56] The Bill risks regressing the Home Office's approach to modern slavery and human trafficking victims.

The removal of the duty to grant leave to remain to assist recovery (clause 39)

86. At present, the Home Secretary has a duty to grant limited leave to remain to victims of trafficking with a positive conclusive grounds decision if it will assist them with their recovery from any physical or psychological harm.

87. Under ECAT, which the UK has ratified, Article 14 provides that states should issue a *'renewable residence permit'* if their stay is *'necessary owing to their personal situation'* or *'necessary for their cooperation with the authorities in an investigation or prosecution'*.[57]

88. Helen Bamber Foundation research found that, in 2024, only 4% of trafficking victims (176 people) were granted limited leave to remain and nearly half of those were granted less than 12 months. Only five out of 599 confirmed child victims were

[54] Home Office, 'Immigration and Asylum Bill European Convention on Human Rights Memorandum' (30 Jun 2026), §27.

[55] *Rantsev v Cyprus and Russia* (2010) 51 EHRR 1.

[56] Home Office, 'Modern Slavery: Statutory Guidance for England and Wales (under section 49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland' (11 May 2026)

[57] ECAT, Article 14.

granted limited leave.[58] This provision will weaken this already limited protection; the Secretary of State will only have a duty to grant leave to victims if it is required to seek compensation or to co-operate with an investigation or criminal proceedings.

89. As the Government's explanatory notes set out at the time, section 65(2)(a) of the 2022 Act was intended to clarify the obligation in Article 14(1)(a) ECAT by defining when a person's stay was necessary owing to their personal situation.[49] This already narrowed the circumstances in which the 'personal situation' limb would require leave compared with the broader interpretation that had emerged from litigation.[50] While it is not set out on the face of the Bill or its accompanying documentation, Clause 39 would go further by removing from domestic legislation this statutory duty. This leaves a concerning gap in the domestic framework for giving practical effect to Article 14(1)(a) ECAT and raises concerns as to future compliance.

90. These provisions are further troubling examples of the UK backsliding in its approach to the protection of modern slavery and human trafficking victims, following the Modern Slavery Act 2015.

Conclusion

91. JUSTICE is firmly opposed to the abolition of the Tribunal, which removes independent judicial oversight of the Home Office's immigration, asylum and nationality law decisions and will exacerbate (not resolve) the appeal backlog. We have also highlighted concerns around the Article 8 changes and the modern slavery reforms. We recommend that the Committee apply close scrutiny to, and amend, the Bill to ensure that it is ECHR compliant, upholds access to justice and sustains the rule of law.

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[58] Helen Bamber Foundation, 'Thousands of confirmed trafficking victims denied permission to stay in the UK and left at risk' (15 July 2025)