



JUSTICE

Immigration and Asylum Bill: Public Bill Committee Briefing

Committee Stage, House of Commons

7 October 2026

Introduction

1. JUSTICE is a law reform and human rights organisation working to create a fair justice system within everyone's reach.
2. This is a House of Commons Committee Stage briefing for the Immigration and Asylum Bill (the "**Bill**"). In summary, we oppose the abolition of the independent immigration tribunal, raise concerns regarding the reinterpretation of Article 8 ECHR, and highlight further backsliding on the UK's approach to modern slavery and human trafficking.

Abolishing independent judicial oversight of immigration decisions

3. Part 1 of the Bill would do away with independent judges of the First-tier Tribunal (Immigration and Asylum Chamber) ('the **Tribunal**') and replace them with a new independent immigration appeals authority ('**IIAA**') under the control significantly of the Secretary of State. This will reduce legal accountability for Home Office decision-making and leave the appeal backlog unresolved.

The importance of the independent judiciary

4. Courts and tribunals, overseen by independent judges, are crucial to the rule of law. 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
5. Reducing the role of judges in overseeing immigration decisions would put Home Office decisions above independent legal accountability in cases involving fundamental human rights: children being separated from their parents and vulnerable people facing to torture or death. Whilst there would be a right to appeal to the Upper Tribunal, this would

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

only be on points of law and would require permission, and risk pushing the backlog further downstream.

6. In addition to this being a costly process, likely to consume the time of practitioners and government for years to come, 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?
7. To uphold the fundamental check and balance our First-tier Tribunal (IAC) provides, our primary position is that we recommend leaving out Part 1 of the Bill, and its associated Schedules:

***Leave out* Clauses 1 – 16 and Schedules 1 – 3 (as tabled by Sian Berry MP)**

8. Should these amendments not receive the support of the Committee, we have set out alternative amendments below.

The IIAA's lack of independence

9. Despite its name, our concerns have not been allayed about the independence and expertise of the new appellate body. At present, Tribunal judges are selected and recommended 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
10. The proposed IIAA would have *nowhere near* the same level of independence as the Tribunal. The Home Secretary, against whose decision the appeal is brought, would have significant control over the adjudicative body's structure, personnel, funding, rules, and case management. This undermines the prospect of a fair hearing, from the very outset.

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

11. No government department should be looking to reduce independent accountability, particularly the Home Office, as it has only been a few years since the Windrush Lessons Learned Review found that 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 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
12. 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 will make the decision and what the rules of the appeal are. We are not satisfied that the institution or its appointment processes, as prescribed in the Bill, will ensure fairness or independence.
13. To improve the independence of the Tribunal, we support the following amendment:

Clause 2, page 2, leave out lines 24 to 28 and insert -

- (2) The Chair of the IIAA is to be appointed by the Judicial Appointments Commission.*
- (3) The Chief Executive of the IIAA is to be appointed by the Judicial Appointments Commission.*
- (4) The Chief Appeals Officer and the Professional Standards Officer of the IIAA are to be appointed by the Judicial Appointments Commission.*
- (5) The IIAA adjudicators are to be appointed by the Judicial Appointments Commission.*

Member's explanatory statement

This amendment would require the Chair, the Chief Executive, the Chief Appeals Officer, and the Professional Standards Officer of the IIAA to be appointed by the Judicial Appointments Commission.

The IIAA's overriding objective

14. 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*

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).

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

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).

15. Although the precise intended effect of this qualification is unclear, its inclusion is significant. It recasts fairness, accessibility, and independence as matters to which the IIAA need only aspire, while imposing a firmer obligation to take 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.
16. We therefore propose the following amendments, which would retain the existing overriding objective and ensure it is applied to the new appellate body to avoid double standards across our justice system, including between the Upper Tribunal (IAC) and the IIAA:

Clause 1: new overriding objective for the IIAA:

Clause 1, page 2, line 1, leave out subsection (5) and insert:

"(5) In the exercise of its functions, the IIAA must deal with cases fairly and justly including

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- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal,*
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings,*
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings,*
- (d) using any special expertise of the IIAA effectively, and*
- (e) avoiding delay, so far as compatible with proper consideration of the issues.*

Clause 4, page 4, line 21, replace "must have regard to the desirability of" with "must exercise its power with a view to"

Member's explanatory statement

This applies the overriding objective of the current Immigration and Asylum Tribunal to the new IIAA and places it in on statutory footing.

Decisions immune from judicial review

17. 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)).
18. 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 these expansive powers to change decisions taken are to operate in practice (Clause 6; Sch 3, para 6).

19. 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
20. 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.
21. 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.
22. 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. Judicial review is a crucial way of ensuring accountability and it is a core

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.

¹¹ *Balajigari v SSHD* [2019] EWCA Civ 673, per Underhill J 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).

component of the rule of law that all public decision-making should be open to legal challenge. This improves the quality of decision-making and the effectiveness of public bodies; ousting the jurisdiction of higher courts increases the likelihood of unlawful and poor-quality decision-making in such a crucial area.

23. We, therefore, propose the following amendment to remove the ouster of jurisdiction to review decisions made by the IIAA, particularly for procedural, ancillary, or preliminary decisions:

Clause 1, page 2, leave out subsection (8).

Explanatory note: This amendment would enable individuals to initiate judicial review proceedings against decisions of the IIAA, for which there is no right of appeal to the Upper Tribunal.

24. Furthermore, we propose the following further amendment to restore the jurisdiction of our higher courts to review permission applications, in view of the fact that individuals are to be denied a hearing before a tribunal judge:

Clause 7, page 4, line 29, leave out sub-section (3).

Member's explanatory statement

This amendment would remove the ouster of judicial review for a refusal of permission to appeal by the Upper Tribunal.

The importance of legal expertise

25. 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. There are regular additions of new Appendices to the ever-growing Immigration Rules, with 11 Statements of Changes to the Rules in the last two years through thousands of amendments, on top of annual Bills changing the law at the level of primary legislation.

26. 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

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

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).

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.

27. 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 IAA 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.
28. 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, asylum, nationality, 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.
29. 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

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).

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

permitted in the Tribunal previously, they were not regularly used and sat with legally qualified members.²⁰

30. 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).

31. We, therefore, support the following amendment:

Clause 2, page 3, line 6, leave out "senior".

Member's explanatory statement

This amendment would require all senior and executive adjudicators deciding appeals for the IIAA to have legal qualifications or experience.

The IIAA will make the appeal backlog worse, not better

32. 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

33. Replacing 350 experienced immigration judges will not make the system more efficient. It will likely have the opposite effect, with significant time spent training new adjudicators and a lengthy 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).

34. When Australia recruited immigration adjudicators without legal qualifications, it was 'widely acknowledged' this led to significant delays in appeals and an in the appellate backlog. 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

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

Denmark, cited by the Home Office as a key inspiration for these reforms, an independent judge always sits as part of the panel or alone in accelerated cases.²⁴

35. We welcome the full appeal rights on points of law to the Upper Tribunal, which we called for in our consultation response. However, employing hundreds of inexperienced adjudicators to conduct complicated legal hearings, with vulnerable applicants, risks displacing the backlog to the Upper Tribunal, rather than resolving it. Expert First-tier Tribunal judges are more likely to get appeals right the first time, reducing the number of appeals to the Upper Tribunal, or hearings to re-make erroneous decisions.

36. We are concerned that individuals without legal advice or representation will struggle to access justice in the IAA. 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, by Jo Wilding, has found a gap of at least 57% between legal aid provision and eligible asylum legal aid need.²⁷

37. 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 Frontloading early legal advice for asylum claims – as is done in Switzerland – has reduced delays and the number of successful appeals.³⁰ We recommend that the Government amend the Bill to secure the availability of early legal advice and representation.

Claim Notices

38. The Bill creates a new ‘Claim Notice’ procedure, for those liable to deportation or removal. Upon receipt of such a notice, any reason/grounds and supporting evidence

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).

for remaining in the UK will need to be given within a set time period (as yet unspecified) 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.

39. The Home Office has 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

40. Whilst there is limited detail about these new processes in the Bill, 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).

41. Moreover, there appears to be no measures taken to ensure that individuals have the legal advice and representation necessary to respond to the notices within a timely fashion, or that the failure of the Lord Chancellor to secure the necessary advice be accepted as good reason for a delay in or failure to respond. This is of great consequence, as the failure to respond in-time must be taken as damaging the credibility of a victim of trafficking or modern slavery³³ and an appellant or applicant for immigration bail.³⁴

42. We, therefore, support **Stand Part** amendments to Clauses 11 and 12, as set out above, and consequential amendments to the remainder of the Bill.

Temporary refugee protection

43. 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.³⁵ This is in addition to the Government introducing a new system where those granted core protection receive only 30 months' leave at a time and a 20-year route to settlement.³⁶ The effect is to make protection status legally and practically precarious

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 Clause 36(2)

³⁴ Schedule 3, paragraph 11(3) of the Bill.

³⁵ Home Office, '[Restoring Order and Control: A statement on the government's asylum and returns policy](#)' (November 2025).

³⁶ 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.

for a prolonged period, until refugees are able (if they are ever) to meet the requirements of the (as yet unannounced) Protection and Study work route.

44. Furthermore, this provision and our wider legislative framework fails to recognise that for refugees, their country is unsafe for them, based on their race, religion, nationality, political opinion or membership of a social group, regardless of whether it is safe "in general".

45. 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.³⁷ We are concerned that the new system will undermine assimilation and naturalisation, with individuals facing up to eight status' reviews over 20 years. 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.³⁸ 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

46. Article 8 of the European Convention on Human Rights ('**ECHR**') protects the right to a private and family life. It is a qualified right that can be interfered with by public authorities so long as the 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.

47. 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 is obliged under the ECHR to abide by judgments of the European Court of Human Rights ('**ECtHR**') made against it,³⁹ and must act within the wide discretion set out in 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.

³⁷ *Convention Relating to the Status of Refugees* (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, art 34.

³⁸ 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.

³⁹ ECHR, article 46.

48. 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.'*⁴⁰ 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.'*⁴¹ The instruction of Parliament to judges is to *'have regard'* to the considerations set out in sections 117A to 117C.⁴² 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 core family unit (clause 18)

49. 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 human rights obligations.

50. 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.⁴³ 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.⁴⁴ 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.'⁴⁵ To rectify this, we propose the following amendment to the Bill:

Clause 18, page 15, line 35 at end insert -

(aa) A is a young adult, living with parent B, and A has not yet started a family life of their own, or

⁴⁰ *Rhuppiah v Secretary of State for the Home Department* [2016] EWCA Civ 803, para 36, quoting Sales LJ (as he then was).

⁴¹ *Ibid.*

⁴² *Ibid.*, para 49; s 117A (1B), inserted by CI 18(3), and s 117A(2).

⁴³ 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.

⁴⁴ Home Office, *'Immigration and Asylum Bill European Convention on Human Rights Memorandum'* (30 Jun 2026), para 25.

⁴⁵ *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].

Member's explanatory statement

This amendment would ensure alignment of the new provision with human rights case law, which contains a presumption of family life between young adult children and their parents.

51. 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.

52. To ensure that the new provision can account for unforeseen circumstances and exceptional cases, we recommend the simple addition of the word "normally":

Clause 18, page 16, line 2, add in "normally" after "do not".

Member's explanatory statement

This amendment would ensure that the listed factors would not normally, rather than automatically, be excluded from constituting an additional element of dependency when taken independently, allowing the full individual circumstances of each case to still be considered.

Reducing the weight given to private and family life (clause 19)

53. 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.

54. 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.'*⁴⁶

⁴⁶ *Rhuppiah*, para 49; also reiterated in *NA (Pakistan) v Secretary of State for the Home Department* [2016] EWCA Civ 662, para 38.

55. Nevertheless, we are particularly concerned by Clause 19(4). It substitutes section 117B(4), providing 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 is not unlimited.⁴⁷ 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.
56. 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.⁴⁸ A statutory rule that leaves no room for that individualised assessment risks falling short of this requirement.
57. 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*’.⁴⁹
58. We, therefore, support the following amendment:

Clause 19, page 17, line 3, leave out “no” and insert “little”.

Member’s explanatory statement

This amendment ensures the proportionality assessment is not foreclosed by the “no weight” provision.

Limiting the legislative definition of children’s best interests (clause 19)

59. 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 interest test meant the Home Office could 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

⁴⁷ *Agyarko v Secretary of State for the Home Department* [2017] UKSC 11, para 46.

⁴⁸ *Unuane v the United Kingdom* App no 80343/17 (ECtHR, 24 November 2020).

⁴⁹ *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74, para 10.

- (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'.

60. 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. There seems to be little consideration for children's rights and best interests. Rather, the new provisions 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 statutory duty to safeguard and promote).⁵⁰

61. We propose the following amendments:

Clause 19, page 17, line 15, leave out "long-lasting"

Clause 19, page 17, line 26, leave out "long-lasting"

Member's explanatory statement

These amendments remove the requirement that an adverse impact on a child must be 'long-lasting', as acute but short-lasting adverse impact may be contrary to their best interests.

Clause 19, page 17, line 19, leave out "(and only if)"

Member's explanatory statement

This amendment ensures that the conditions for when it would not be reasonable to expect a child to leave the UK include but are not restricted to those identified, to avoid foreclosing consideration of a child's human rights, including their best interests, private and family life.

Eligibility for the 'unduly harsh' test (clause 20)

62. Currently, there are separate legal tests for when a foreign national offender 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 for parents with children). For those with

⁵⁰ Borders, Citizenship and Immigration Act 2009, [section 55](#).

a sentence of at least four years imprisonment, beyond those tests of exceptions, there must be additional '*very compelling circumstances*'.

63. 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.⁵¹ 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, 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.⁵²

64. 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.⁵³ According to the latest available Home Office statistics (up to 2021), only 0.73% of foreign national offenders have successfully appealed their deportation on human rights grounds.⁵⁴

65. In particular, the best interests and well-being of children must be properly considered.⁵⁵ 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.⁵⁶ 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.

⁵¹ Immigration Act 1971, [section 3\(5\) \(a\) or \(6\)](#); CI 20(4).

⁵² CI 20(3), s 117C(3), emphasis added.

⁵³ *Boultif v Switzerland* 2001 App No. 54273/00.

⁵⁴ Victoria Adelmant, Alice Donald and Başak Çali, '[The European Convention on Human Rights and Immigration Control in the UK: Informing the Public Debate](#)' (Bonavero Reports, 4 September 2025), p4.

⁵⁵ *Üner v The Netherlands*, 2006 App No. 46410/99.

⁵⁶ *Unuane v UK* 2020 App No. 80343/17.

66. 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.

67. We propose the following amendments:

Page 18, line 6, leave out "(and only if)"

Page 18, line 9, leave out from "and" until "section 117B(1) to (5))"

Member's explanatory statement

This ensures that all relevant circumstances may be considered when assessing whether an individual's deportation is in breach of Article 8 ECHR.

Retrospectivity

68. Clause 52(9) allows for regulations to be made by the Secretary of State to bring into force provisions in Part 2 (i.e. those relating to Article 8 ECHR) to have retrospective effect.

69. Legal certainty requires individuals to know what their rights are, how they can be enforced and in what venue. Lord Justice Laws said that it was '*a requirement of good administration, by which public bodies ought to deal straightforwardly and consistently with the public*'.⁵⁷ This is an important part of the UK's common law tradition. The House of Lords Constitution Committee has emphasised that retrospective legislation should only be passed in '*very exceptional circumstances*'.⁵⁸ The threshold for this should be even higher when it is a regulatory power given to the Secretary of State, significantly limiting the ability for proper scrutiny by Parliament. We recommend the Government explain the necessity and very exceptional circumstances justifying such retrospective provision.

70. If there are no very exceptional circumstances, in view of the need to protect the rule and certainty of the law, we propose omitting the provision:

Clause 52, page 53, line 23, leave out subsection (9).

Member's explanatory statement

This amendment removes the ability of the Secretary of State to pass regulations with retrospective effect.

⁵⁷ *Nadarajah & Ors v SSHD* [2005] EWCA Civ 1363, para 6

⁵⁸ House of Lords Constitution Committee, '*Nationality and Borders Bill*' (21 January 2022), para 22

Modern Slavery Provisions

71. 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)

72. 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 provision of information '*strikingly similar*' to another person claiming to be a victim. As above, 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.

73. The Government's ECHR Memorandum asserts that '*decision makers must continue to assess all evidence fairly, including reasons for late disclosure*'.⁵⁹ 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.⁶⁰ Article 13 ECAT provides for a recovery and reflection period precisely because early disclosure is often unrealistic for trafficking survivors.

74. 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.⁶¹ The Bill risks regressing the Home Office's approach to modern slavery and human trafficking victims.

75. We therefore propose the following amendment:

Page 37, line 24, leave out Clause 36

Removal of duty to grant leave to remain to assist recovery (clause 39)

⁵⁹Home Office, 'Immigration and Asylum Bill European Convention on Human Rights Memorandum' (30 Jun 2026), §27.

⁶⁰*Rantsev v Cyprus and Russia* (2010) 51 EHRR 1.

⁶¹Home 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)

76. 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.
77. 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'*.⁶²
78. 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 granted limited leave.⁶³ Clause 39 will weaken this already limited protection, as 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.
79. 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.⁶⁴ This already narrowed the circumstances in which the 'personal situation' limb would require leave to remain compared with the broader interpretation that had emerged from litigation.⁶⁵ While it is not set out on the face of the Bill or its accompanying documentation, Clause 39 would go further by removing this statutory duty from domestic legislation. 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.
80. We support the following amendment:

Leave out Clause 39 and insert the following new Clause -

Leave to remain for victims of slavery or human trafficking

(1) Where a decision has been made by a competent authority that a person is a victim of slavery or human trafficking (a "positive conclusive grounds decision"), that person must be granted—

- (a) leave to remain lasting for a period of 60 months,
- (b) recourse to public funds and the right to work.

⁶² ECAT, Article 14.

⁶³ Helen Bamber Foundation, *'Thousands of confirmed trafficking victims denied permission to stay in the UK and left at risk'* (15 July 2025)

⁶⁴ Home Office, *'Nationality and Borders Bill Explanatory Notes'* (9 November 2021), p.71.

⁶⁵ *R (EOG and KTT) v Secretary of State for the Home Department* EWCA Civ 307, [2023] QB 351; *R (XY) v Secretary of State for the Home Department* [2024] EWHC (Admin).

(2) a person granted leave as a victim of trafficking and modern slavery will be eligible for settlement after accruing five years of any form of leave to remain in the UK.

(3) Section 65 of the Nationality and Borders Act 2022 is repealed."

Member's explanatory statement

This amendment ensures that recognised victims of trafficking (those who have received a positive conclusive grounds decisions) are granted to leave to ensure they can access meaningful long-term support and recovery, seek compensation and/or assist with criminal proceedings where appropriate.

81. 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

82. JUSTICE is firmly opposed to the replacement of the First-tier Tribunal (IAC), with adjudicators who are less independent and without legal qualifications or experience. The removal of independent judicial oversight of the Home Office's immigration, asylum and nationality law decisions will exacerbate (not resolve) the appeal backlog. We are also concerned by the regressive approach being taken to refugees, victims of trafficking and modern slavery, children and individuals with protected private and family life. We recommend that the Committee amend the Bill to ensure that it is compliant with our human rights obligations and upholds the rule of law, including access to justice.

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