

Written evidence submitted by the Law Society of England and Wales to the Public Bill Committee for the Immigration and Asylum Bill (IAB29)

04 September 2026

The Law Society of England and Wales is the independent professional body representing over 210,000 solicitors. We have a statutory public interest role in supporting the rule of law and improving access to justice.

Summary

Reducing backlogs and improving the efficiency of the immigration and asylum system is to the benefit of everyone. However, there is no evidence that the reforms within this Bill will deliver on these aims. To achieve these objectives reforms must be able to deliver decisions that are fair, accurate, and final. Instead, the Bill's measures will reduce the quality of decision-making and exacerbate delays, while also undermining judicial independence, access to justice and protection of human rights.

If amendments are not made the Bill will:

- Introduce a new immigration and asylum appeals body which lacks independence, expertise and procedural fairness.
- Reduce protections under Article 8 of the European Convention on Human Rights (ECHR), particularly by preventing full, rights-compliant proportionality assessments and removing the requirement for Government to act in the best interests of children.
- Undermine efforts to tackle people trafficking and instead penalise victims of modern slavery for well-documented effects of exploitation and distort the use of public order disqualifications to circumvent international legal obligations.

We recommend a series of changes to the Bill's provisions to ensure that any reforms enhance, rather than diminish, the quality, fairness, and legality of the immigration and asylum system. This is, however, difficult to do when the Bill leaves significant aspects of the proposed framework to future regulations, which have not yet been published. This is unacceptable given the significance of the rights and protections at stake.

Our key recommendations:

Part 1 - the IIAA

- The Government must demonstrate how the IIAA will remain independent of the Secretary of State in practice. The Law Society recommends that the new appeals body does not sit within the Home Office and that all senior appointments are made through an independent appointment's process,

thereby strengthening the IIAA's independence and public confidence in its decision-making.

- The Bill should require adjudicators to be legally qualified, or at the very least the Home Secretary should outline what additional resources they will have to ensure they have access to a high level of legal advice.
- The Government should justify the inclusion of Clause 1(8) and explain how restricting judicial review of IIAA decisions, including case management decisions, is compatible with the rule of law and the right to a fair hearing under Article 6 ECHR. If such provision cannot be justified, the Law Society recommends removing Clause 1(8) from the Bill.
- The Bill should provide that decisions to expedite proceedings are made independently by the IIAA. Both appellants and the Secretary of State should be entitled to apply for expedition, with the IIAA retaining discretion to grant such applications only where doing so would not prejudice procedural fairness or access to justice.
- The Government should explain the intended purpose and scope of Schedule 3, paragraph 8 and justify why a power to conduct proceedings without notice is necessary in the context of asylum and human rights appeals. In the absence of clear safeguards, the provision should be removed or amended to ensure that no substantive issue affecting the outcome of an appeal can be determined without all parties having notice and a reasonable opportunity to be heard.
- The Home Office should work with the Ministry of Justice (MoJ) and the Legal Aid Agency (LAA) to ensure that adequate arrangements for legal advice provision will be in place before these reforms proceed. We are seriously concerned with how little attention has been paid to this vital access to justice issue, which will see delays and errors further compounded.

Part 2 - Article 8

- The Bill must make provision for establishing when non-cohabitating couples have family life for the purposes of Article 8.
- New section 117AA(5)(b)(iii) should be removed as it is likely to be incompatible with Article 8 ECHR, as ECtHR case law states that dependency can be established where someone is physically or mentally ill even if they would receive adequate care and support from an alternative source with the country where they are located.
- Changes must be made so that appropriate weight is given to family life established while a person is in the UK without leave, thereby ensuring that a full and individualised proportionality assessment can be undertaken, particularly where compelling circumstances arise.

- Clause 19(7) should be removed from the Bill to ensure that the best interests of the child remain a primary consideration in all decisions affecting children.
- The Government must provide further detail in relation to Clause 19(2) on how the financial independence test will be determined and what evidence would be required, to ensure Parliament can properly scrutinise these provisions.
- The public interest test, as applied to those with a criminal history, should allow the seriousness or circumstances of the crime to be taken into account, as well as how long ago it was committed and whether there has been no reoffending. Further detail should also be provided on how the requirement that someone be of “good character” will be applied.
- The restricted exceptions for challenging deportation listed in Clause 20 should continue to apply only to foreign criminals rather than all those liable to deportation.
- The power in Clause 52(9) to commence Part 2 retrospectively should be removed.

Part 5 - modern slavery

- In Clause 36 and 38 the Bill must be clear that trauma, coercion, other factors indicating particular vulnerability and lack of timely legal advice must be considered as good or compelling reasons for late disclosure.
- To ensure public order disqualifications do not undermine efforts to tackle modern slavery and protections for victims the Government should refrain from bringing into force section 29 of the Illegal Migration Act 2023 and remove clause 38(2)(i) from the Bill. However, this will not fully address the issues created by public order disqualifications which should be further examined and addressed, including by repealing section 63(3)(f) of the Nationality and Borders Act 2022.
- Clause 39 should be removed from the Bill to retain the duty to grant limited leave to remain to a confirmed victim of modern slavery where this is necessary to assist their recovery.
- We encourage Public Bill Committee members to seek from Government clarification of what reasons will be accepted from businesses for not taking steps to identify and mitigate risks of modern slavery or human trafficking in their supply chains.

Part 1 - Independent Immigration Appeals Authority

Reforms must address the true causes of backlogs

1. The Law Society opposes the introduction of a new appeals body. While we recognise the Government's legitimate objective of reducing backlogs and improving the efficiency of the immigration and asylum system, reforms

should ultimately be judged on whether they deliver decisions that are fair, accurate, and final. In the Bill's current form, they do not.

2. The most effective way to reduce appeals and deliver faster final outcomes is to improve the quality of initial Home Office decisions. Where decisions contain significant errors, the inevitable result is more appeals, greater cost and longer uncertainty for everyone involved. Investing in getting decisions right first time should therefore be central to any credible strategy for reducing the backlog and restoring confidence in the system.
3. As an Institute for Fiscal Studies report published in July 2026 highlights, the appeals backlog does not reflect a tribunal that is ineffective but rather results from a spike in demand and the impact of "first-instance decision makers".¹ For example, promises made by the Government to clear the legacy backlog by December 2023 led to the Home Office making four times as many initial decisions (76,000) in 2023 as in the previous year² - shifting its backlog to the tribunal system. The Institute for Fiscal Studies report highlighted a 35% increase in sitting days would have avoided the appeals backlog.³
4. The Home Office's own data shows that only 52% of decisions met its quality standard in 2023/24.⁴ The National Audit Office reported that for the year ending May 2025, 42% of sampled Home Office asylum decisions had significant errors.⁵ And in the year ending March 2025, 45% of asylum refusals reviewed by the First-Tier Tribunal were overturned. These figures show a public service under strain and an independent safeguarding body having to correct a substantial number of decisions.
5. There is a large risk that this body would in fact set the asylum system back even further. Creating a new institution will not create capacity quickly. It will require funding, recruitment, training, new procedural rules, and technology. The system will also run alongside the existing one in a transitional period. This risks adding disruption to an already stretched system, potentially increasing backlogs further.

The independence of the IIAA

6. An effective appeals system must not only be independent but command confidence that it is independent in practice. As the Home Office is itself a party to an appeal, safeguards are needed to maintain a clear separation between the

¹ Rizzotti, Luca, and Tomlinson, Joe. *What Is Driving Increases in Tribunal Backlogs?* Institute for Fiscal Studies, 2026. IFS Report. *K10plus* ISBN, p 22: <https://doi.org/10.1920/re.ifs.2026.0035>.

² Davies, Gareth. *An analysis of the asylum system*. National Audit Office, 10 December 2025, p.24. <https://www.nao.org.uk/wp-content/uploads/2025/12/an-analysis-of-the-asylum-system.pdf>

³ Rizzotti, Luca, and Tomlinson, Joe. *What Is Driving Increases in Tribunal Backlogs?* (n3): p 3

⁴ UK Visas and Immigration, 'Immigration and protection data: Q2 2024' (22 August 2024). Available at: <https://webarchive.nationalarchives.gov.uk/ukgwa/20240902201533/https://www.gov.uk/government/publications/immigration-and-protection-data-q2-2024>

⁵ Davies, Gareth. *An analysis of the asylum system*. (n4) p 35

department making the original decision and the body reviewing it. Visible and credible independence strengthens the legitimacy of both successful and unsuccessful appeals and makes final outcomes more likely to command public confidence. No government should blur the line between administering the immigration and asylum system and independently reviewing its decisions.

7. The proposed governance of the IIAA raises significant concerns. The Chair, Professional Standards Officer, first Chief Executive and Chief Appeals Officer are all to be appointed by the Secretary of State. Adjudicators are to be appointed by the Chief Executive. It is difficult to see how the Government can reconcile the independence of the new appeals body with the Secretary of State appointing its senior leadership team.
8. The Secretary of State is also given the power to regulate the time period of appeals before the IIAA, with the Chief Executive to be made aware and the annual report to identify any cases where the time period is extended. In addition, the Secretary of State has the power, under the Bill's Clause 9, to ask the IIAA to expedite certain cases. This power, alongside cases being expedited if an appellant fails to respond to a claims notice, and late compliance/disclosure potentially harming credibility (Clause 12 and Schedule 3 paragraph 10(1) and 11) raises further concerns about procedural fairness under Article 6 ECHR, as well as the perceived independence of the new appeals body.
9. Treating late disclosure as damaging to credibility may fail to reflect the practical realities faced by people seeking asylum. Failure to comply with a requirement may be for legitimate reasons, including difficulties securing timely legal advice and representation, the impact of trauma on disclosure, experiences of human trafficking, or barriers to obtaining relevant evidence. Processes which seek to deal with cases at speed risk undermining the ability of individuals, and particularly those who are detained, to effectively assert their rights.
10. **The new appeals body should not sit within the Home Office and all senior appointments should be made through an independent appointment process, thereby strengthening the IIAA's independence and public confidence in its decision-making.**

Suggested amendments:

Removal of provisions relating to the IIAA

- We recommend indicating on the amendment sheet an intention to oppose the Question on clause stand part for all clauses in part 1 and Schedule 1 to 3

Member's explanatory statement

This would abolish the proposed Independent Immigration Appeals Authority and the related appeal and case-management provisions established by that part.

If however Parliament decides to go ahead with a new appeals body, we propose the following amendments to ensure the independence of the IIAA:

IIAA Independence Package

These amendments would place the proposed Immigration and Asylum Appeals Authority within the existing courts and tribunals framework, ensure its administration by HMCTS rather than the Home Office, remove ministerial influence over appointments, decisions and case management, and provide statutory guarantees of judicial independence comparable to those applying elsewhere in the tribunals system.

Status, Administration and Independence of the Immigration and Asylum Appeals Authority

- To move the following Clause -

"Status, Administration and Independence of the Immigration and Asylum Appeals Authority

(1) The Immigration and Asylum Appeals Authority ("the IIAA") is established as an independent tribunal.

(2) The IIAA forms part of the unified tribunal system.

(3) The IIAA shall be administered by His Majesty's Courts and Tribunals Service.

(4) The IIAA shall operate under the leadership of the Senior President of Tribunals.

(5) The IIAA does not form part of the Home Office.

(6) The Secretary of State, the Lord Chancellor, and any person exercising functions under this Act must uphold the continued independence of the IIAA.

(7) Neither the Secretary of State nor any other Minister of the Crown may direct or otherwise seek to influence—

- (a) the determination of proceedings before the IIAA;
- (b) the allocation or listing of cases;
- (c) the assignment of adjudicators to particular proceedings;
- (d) the giving of legal advice to adjudicators;
- (e) the content of decisions or reasons given by the IIAA; or
- (f) the exercise of any judicial function by an adjudicator.

(8) The Lord Chancellor must ensure that the IIAA is provided with such staff, accommodation, services and resources as are reasonably required for the exercise of its functions.

(9) The Lord Chancellor may provide administrative support to the IIAA but may not direct the exercise of its adjudicative functions.

(10) Adjudicators of the IIAA shall exercise their functions independently.

(11) The Chair of the IIAA may report to the Senior President of Tribunals, the Lord Chancellor, Parliament, or the Secretary of State on matters relating to the effective administration of the IIAA.

(12) In exercising functions under this Act, all persons must have regard to the need to preserve the independence of the IIAA."

Supporting amendment:

- Clause 1, page 2, line 4, leave out from "interest" to the end of line 5.

Member's explanatory statement

This amendment places the IIAA within the unified tribunal system administered by HMCTS, removes it from Home Office control, and provides statutory guarantees of judicial independence consistent with existing constitutional protections applicable to courts and tribunals.

Independent Appointment of Adjudicators and Senior Office Holders

- To move the following Clause -

"Appointments

(1) The Chair, Chief Appeals Officer and adjudicators of the IIAA shall be appointed following selection by the Judicial Appointments Commission.

(2) Selection under this section must be solely on merit.

(3) In exercising functions under this section, the Judicial Appointments Commission shall have regard to the need to maintain the independence, impartiality and effectiveness of the IIAA."

Member's explanatory statement

This amendment removes ministerial control over appointments to the IIAA and aligns appointments with the existing judicial appointments framework.

Security of Tenure

- To move the following Clause -

"Removal from Office

(1) A Chair, Chief Appeals Officer or adjudicator of the IIAA may be removed from office only in accordance with procedures applicable to tribunal office holders.

(2) Removal may take place only on grounds of—

(a) incapacity;

(b) misconduct; or

(c) failure to fulfil the requirements of office.

(3) The Secretary of State shall have no power to remove from office any person appointed under this Act.

(4) Any disciplinary process relating to a person appointed under this Act must be conducted independently of the Secretary of State."

Member's explanatory statement

This amendment provides protections against executive dismissal and safeguards the decisional independence of adjudicators.

Funding and Administrative Independence

- To move the following Clause -

"Funding and Resources

(1) The Lord Chancellor must secure such resources as are reasonably necessary for the effective exercise of the functions of the IIAA.

(2) Funding arrangements relating to the IIAA shall not be used so as to influence the determination of appeals or the exercise of adjudicative functions.

(3) HMCTS must have regard to the need to protect the operational independence of the IIAA when exercising administrative functions relating to it.

(4) The annual report of the IIAA shall include an assessment of whether the resources available to it have been sufficient to enable the effective discharge of its statutory functions."

Member's explanatory statement

This amendment ensures that the IIAA is adequately resourced through HMCTS while protecting adjudicative independence from indirect influence through funding decisions.

Representative Function

- To move the following Clause -

"Representative Function

(1) The Chair of the IIAA may represent the views of adjudicators and office holders of the IIAA to—

(a) the Senior President of Tribunals;

(b) Parliament;

(c) the Lord Chancellor;

(d) the Secretary of State.

(2) The Chair may publish reports and make representations regarding—

(a) the administration of justice;

(b) the operation and performance of the IIAA;

(c) the independence of adjudicators;

(d) the adequacy of resources available to the IIAA.

(3) Nothing in this section authorises the Chair to direct the outcome of any proceedings before the IIAA.

Member's explanatory statement

This amendment provides a formal mechanism through which concerns regarding the operation and independence of the IIAA may be raised with Parliament and Ministers.

- To move the following Clause -

"Consequential amendments

The Tribunals, Courts and Enforcement Act 2007 is amended as follows.

(1) In section 2(4) (Senior President of Tribunals), after paragraph (e) insert—

"(f) the Independent Immigration Appeals Authority."

(2) In Section 2 (Senior President of Tribunals), after 4(e) insert–

"Immigration and Asylum Appeals Authority."

Member's explanatory statement

These amendments align the governance and oversight of the Independent Immigration Appeals Authority with the wider tribunal system by providing for independent appointments, security of tenure, operational independence and oversight by the Senior President of Tribunals.

Procedural Time Limits to be Set Independently

- To move the following Clause -

"Procedural time limits

(1) IIAA Procedure Rules must make provision for time limits as respects initiating, or taking any step in, proceedings before the IIAA.

(2) IIAA Procedure Rules must be made with a view to enabling the IIAA to deal with cases fairly and justly.

(3) The IIAA may extend any time limit prescribed by the Rules where it considers that doing so would further the overriding objective in subsection (2).

(4) Dealing with a case fairly and justly includes, so far as practicable–

- (a) ensuring that the parties are able to participate fully in the proceedings;
- (b) avoiding unnecessary delay;
- (c) dealing with the case in ways which are proportionate to the importance and complexity of the issues;
- (d) seeking flexibility in the proceedings where the interests of justice so require; and
- (e) ensuring the efficient disposal of proceedings."

Consequential amendments

Schedule 3, page 65, line 16, leave out "may" and insert "must".

Schedule 3, page 65 line 17, at end insert–

"() Time limits applicable to proceedings before the IIAA shall be prescribed by IIAA Procedure Rules.

() No Minister of the Crown may prescribe, amend or direct the application of time limits applicable to proceedings before the IIAA other than through amendments to these Rules made in accordance with this Schedule.

() The IIAA may extend any time limit prescribed by the Rules where it considers that doing so would further the overriding objective."

Member's explanatory statement

These amendments are intended to replace clause 8, to remove ministerial control over procedural timetables and retain all responsibility for setting time limits in the procedural rules framework of the IIAA.

Expedition of Cases

- To move the following Clause -

"Expedition of proceedings

(1) Any party to proceedings before the IIAA may apply to the IIAA for the proceedings to be expedited.

(2) Any decision whether to expedite proceedings shall be made solely by the IIAA.

(3) In determining whether proceedings should be expedited, the IIAA must have regard to–

- (a) the interests of justice;
- (b) procedural fairness;
- (c) the efficient disposal of proceedings; and
- (d) the circumstances of all parties.

(4) The IIAA shall not be under any obligation to give effect to a request made under subsection (1).

(5) A request made under subsection (1), and any decision taken in response to such a request along with the reasons for that decision, shall be recorded in writing.

Member's explanatory statement

This amendment is intended to replace Clause 9 to ensure that decisions concerning the expedition of proceedings are made independently by the IIAA and not directed by the Secretary of State.

Notice of Proceedings

- Leave out Schedule 3 paragraph 8

Member's explanatory statement:

This amendment aims to ensure that proceedings before the IIAA are conducted fairly by removing the provision that enables hearings to go ahead without notice.

IIAA adjudicators

11. IIAA adjudicators will not be required, save for senior adjudicators, to be legally qualified. Yet they will not only be determining appeals relating to asylum, but also human rights, EEA and EU citizens' rights, and deprivation of citizenship appeals, as well as deciding immigration bail applications.
12. Such appeals are not straightforward reviews. They regularly require adjudicators to interpret complex and fast-changing legislation and case law, apply refugee and human rights law, assess whether Home Office policy and guidance has been applied correctly, identify procedural unfairness and evaluate complex medical, country and expert evidence.
13. Adjudicators may also need to judge difficult findings about credibility, the treatment of vulnerable witnesses, the best interests of children and the proportionality of interfering with family and private life. These are inherently legal judgments. If adjudicators are not legally qualified, and neither Home Office decision-makers nor Home Office representatives are required to be legally qualified, there is a serious risk that errors of law will not be identified or corrected, undermining the legality, consistency, and fairness of outcomes.
14. This risk is especially acute given the ongoing shortage of legal representatives. Increasing numbers of appellants appear as litigants in person and are often unable to identify legal or procedural errors for themselves. In such cases, adjudicators without legal expertise may also fail to recognise defects in decision making. The result is a higher likelihood of unfair decisions, disadvantaging appellants and reducing trust in the appeals body.
15. The UNHCR has warned that the complexity of asylum and refugee law requires adjudicators with appropriate legal expertise, otherwise there is a risk of flawed decision-making that could generate more reviews and appeals, increase

delays, and place further strain on the appeals system rather than alleviating existing backlogs.⁶

16. In an evidence session before the Justice and Home Affairs Select Committee, the Home Secretary emphasised that adjudicators would have access to legal advice when executing their duties. However, it is not clear what this 'access' would mean in practice. If adjudicators will not be legally qualified, they will require ready access to legal advice and support, much like legal advisers who provide ever-present support to magistrates. This is likely to carry additional cost and raises a broader question as to why legally qualified people should not instead be appointed as adjudicators.

17. The Government should amend the Bill to ensure adjudicators are legally qualified.

Suggested amendments

Legal qualification of adjudicators

- Clause 2, page 3, line 6, leave out 'senior'

Member's explanatory statement

This amendment requires all adjudicators appointed to the Independent Immigration Appeals Authority to meet the same legal qualification requirements currently applied to senior adjudicators.

Assessing the quality of legal decisions

18. The Government's explanatory notes set out that the Chief Appeals Officer (CAO) will be responsible for the quality of legal decision making in the IIAA. However, the CAO will have no authority to intervene in an adjudicator's decision, as only adjudicators have the authority to perform the IIAA's primary function. It is difficult to see how the CAO can be responsible for the quality of legal decision-making whilst at the same time having no power to review adjudicators' decisions.

19. Adjudicative independence prevents inappropriate interference with an individual decision. However, this creates a tension in making the Chief Appeals Officer responsible for quality without giving that office clearly defined powers to address poor performance.

20. The Government should table amendments to explain on the face of the Bill what powers the CAO will have to intervene and assess the decisions of adjudicators.

⁶ UNHCR, International standards and core procedural safeguards to be considered in design of the new appeals body, May 2026, para 29: https://www.unhcr.org/uk/sites/uk/files/docs/uk/2026-06/unhcr_observations_on_the_new_independent_appeals_body_-_june_2026.pdf

This is an important mechanism for ensuring high standards of adjudicator decisions and stopping the backlog from shifting to the Upper Tribunal.

21. Under Clause 1(8), decisions made by the IIAA can only be reviewed by the IIAA itself or on appeal to the Upper Tribunal where a question of law is at issue. The explanatory notes say, “judicial reviews are not the appropriate grounds to challenge a matter that has been before the IIAA”⁷. This provision operates as an ouster clause, preventing external judicial scrutiny of key IIAA decisions.
22. **The Government should justify the inclusion of Clause 1(8) and explain how restricting judicial review of IIAA decisions, including case management decisions, is compatible with the rule of law and the right to a fair hearing under Article 6 ECHR. If this provision cannot be justified, the Law Society recommends removing Clause 1(8) from the Bill.**

Suggested amendments

Removal of ouster clause

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

Member’s explanatory statement

This amendment ensures that judicial review proceedings can be pursued against decisions of the IIAA.

CAO Review functions

- To move the following Clause-

“Chief Appeals Officer: quality assurance and review functions

(1) The Chief Appeals Officer shall be responsible for monitoring and promoting the quality, consistency and effectiveness of decisions made by adjudicators.

(2) For the purposes of subsection (1), the Chief Appeals Officer may–

- (a) conduct audits and reviews of decisions made by adjudicators;
- (b) identify legal, procedural or administrative errors in decision-making;
- (c) issue guidance, practice notes and recommendations relating to decision-making and procedure;

⁷ Home Office, *Immigration and Asylum Bill: Explanatory Notes* (30 June 2026) para.60. Available at: <https://publications.parliament.uk/pa/bills/cbill/59-02/0105/en/260105en.pdf>

- (d) require adjudicators to undertake additional training;
- (e) refer matters of concern regarding the performance or conduct of an adjudicator to the Professional Standards Officer;
- (f) prepare and publish reports on the quality and consistency of decision-making within the IIAA.

(3) Nothing in this section authorises the Chief Appeals Officer to direct an adjudicator as to the determination or outcome of any individual appeal.

(4) The IIAA must publish annually–

- (a) the number of decisions reviewed under this section;
- (b) the number and nature of errors identified;
- (c) the actions taken to improve the quality, consistency and effectiveness of decision-making.

(5) The Chief Appeals Officer shall lay before Parliament an annual report on the exercise of functions under this section.

(6) The annual report under subsection (5) must include–

- (a) an assessment of trends in decision-making;
- (b) an assessment of recurring legal or procedural errors;
- (c) recommendations for improving the quality and consistency of decision-making.”

Member’s explanatory statement:

The amendment requires the Government to explain the CAO’s role and provides a statutory mechanism to prevent poor-quality decisions simply shifting the backlog from the IIAA to the Upper Tribunal.

Access to legal representation

23. In its statement announcing the asylum reforms in November 2025, the Government was clear: “Early legal advice will be a core part of system reforms, avoiding delays and late claims, leading to better decisions”.⁸ There has since been no mention of provision of this. The Bill’s explanatory notes also suggest appellants will have ready

⁸ Home Office, *Restoring Order and Control: A statement on the government’s asylum and returns policy* (21 November 2025), Section 3: Appeals reform, Creating a new appeals body. Available at: <https://www.gov.uk/government/publications/asylum-and-returns-policy-statement/restoring-order-and-control-a-statement-on-the-governments-asylum-and-returns-policy>

access to legal advice, representation and where eligible, legal aid, with no indication of how this is to be achieved.⁹

24. Early legal advice should be understood as a tool for improving the efficiency and accuracy of the system. It helps identify the relevant issues and evidence at an early stage, reduces the risk of avoidable procedural problems and supports better-quality decisions.
25. Access to legal advice is severely limited by the availability and capacity of the legal aid sector and low-cost providers. A Law Society advice desert map shows that 63% of the population in England and Wales have no access to a local immigration and asylum legal aid provider.¹⁰ There is virtually no provision at all outside of the main metropolitan areas.
26. Data from 2023–2024 shows only about 43% of asylum seekers in England and Wales had legal aid representation, meaning 57% were left without access to a legal aid lawyer.¹¹ This figure includes both initial asylum applications and appeals at the First-Tier Tribunal (Immigration and Asylum).
27. The deficit has grown since 2020.¹² Yet the Bill's Impact Assessment acknowledges that demand for legal aid is anticipated to be higher under the IIAA than the First-Tier Tribunal, due to the envisioned higher daily caseload.¹³
28. Notably, Schedule 3 sets out that appellants will be required to complete a statement confirming they have legal advice and/or representation, or consent to proceeding without it. The explanatory notes clarify that this statement will be required to lodge a valid appeal. There is no indication of what measures the IIAA will take if an appellant has sought legal advice and/or representation but has been unable to secure it. And given the time restrictions which may be placed on IIAA appeals, there is a risk that appellants will consent to proceeding without legal advice/representation in order to lodge a valid appeal, without this being their preferred course of action.
29. Additionally, while increasing decision-making capacity is important, speed will not deliver finality if decisions are more likely to be legally flawed. Immigration and asylum appeals involve sensitive information and complex questions of law. Mistakes can generate further appeals and place additional pressure on the Upper Tribunal.

⁹ Immigration and Asylum Bill: Explanatory Notes (n10) para.23, Available at: <https://publications.parliament.uk/pa/bills/cbill/59-02/0105/en/260105en.pdf>

¹⁰ See: <https://www.lawsociety.org.uk/campaigns/justice-and-rule-of-law/civil-justice/legal-aid-deserts/immigration-and-asylum>

¹¹ Dr Jo Wilding, 'Stemming the Tide: The Case for Demarketising the Legal Aid Sector' (6 November 2024). Available at: <https://ilpa.org.uk/stepping-the-tide-the-case-for-demarketising-the-legal-aid-sector/>

¹² *Ibid.*

¹³ Immigration and Asylum Bill: Explanatory Notes (n10) para.196, Available at: <https://publications.parliament.uk/pa/bills/cbill/59-02/0105/en/260105en.pdf>

30. **The Government must work with the Legal Aid Agency to ensure that adequate arrangements for legal advice provision will be in place before these reforms proceed. We are seriously concerned with how little attention has been paid to this vital access to justice issue, which will see delays and errors further compounded.**

Suggested amendments

Availability of legal advice and representation

- *To move the following Clause -*

"Provision of Civil Legal Aid under section 9 LASPO

(1) A Minister of the Crown or public authority may not initiate or defend proceedings under this Act until the Lord Chancellor has made an order in exercise of the powers conferred by section 9(2)(a), and in discharge of the duty imposed by section 1, of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to secure in England and Wales the availability of civil legal services for all claims, appeals, challenges and legal proceedings arising under or by virtue of this Act in relation to proceedings before the IIAA, including but not limited to—

- (a) a asylum appeals
- (b) human rights appeal;
- (c) EEA and EU citizens' rights appeals;
- (d) deprivation of citizenship appeals;
- (d) immigration bail;
- (e) claim notices and the late claims process;
- (f) modern slavery and human trafficking;
- (g) protection claims and protection status;
- (g) asylum support; and
- (h) any appeal to the Upper Tribunal arising from proceedings under this Act.

(2) This section comes into force on the day on which this Act is passed.

Member's explanatory statement:

This amendment aims to ensure the availability of civil legal aid services for appeals, challenges, and legal proceedings covered by this Act.

Evidence base for the appeals body

31. With fundamental reforms at issue, it is strange that the Government has provided no evidence that the new appeals body will achieve its objectives – particularly when other countries' experience provides clear warnings.
32. The Bill's impact assessment evaluates the impacts of the measure as 'uncertain', with the qualification that "the implementation plans for the IIAA are not yet fully developed, and further work is required to understand how its operation will impact the wider appeals system".¹⁴ The assessment provides no estimate of the cost of establishing the IIAA and does not quantify the claimed benefits. The assessment also identifies risks of increased litigation, greater pressure on the Upper Tribunal and legal aid, and difficulties recruiting enough adjudicators to prevent a new backlog.
33. The UNHCR has underscored that similar appeals bodies which were tried and tested in Australia (the Immigration Assessment Authority and the Administrative Appeals Tribunal) were abolished because using unqualified adjudicators contributed to significant delays in determining appeals and to growing appeals backlogs.¹⁵
34. **The Government must provide a full, evidenced impact assessment of the new appeals body and provide a cost estimate for its establishment and the ongoing costs of running it**, which would initially include a two-track system until the First-tier Tribunal is fully replaced. This should be published while the Bill is still before the House of Commons, so parliamentarians have the information they need to assess the Bill, and at any event before these provisions are brought into force.

Suggested amendments:

Impact assessment and annual reporting on the IIAA

- To move the following Clause -

"Review of Independent Immigration Appeals Authority

- (1) No provision establishing the Independent Immigration Appeals Authority may be brought into force until the Secretary of State has laid before Parliament—

¹⁴ Home Office, 'Impact Assessment: Immigration and Asylum Bill' (30 June 2026) p.7. Available at: <https://publications.parliament.uk/pa/bills/cbill/59-02/0105/ImpactAssessment.pdf>

¹⁵ UNHCR, 'International standards and core procedural safeguards to be considered in design of the new appeals body' (May 2026), para.35. Available at: [unhcr_observations_on_the_new_independent_appeals_body.pdf | UNHCR UK](#)

- (a) a full impact assessment of the proposed IIAA;
- (b) an estimate of the establishment costs of the IIAA;
- (c) an estimate of the annual operating costs of the IIAA;
- (d) an assessment of the likely impact on appeal waiting times;
- (e) an assessment of the likely impact on legal aid expenditure;
- (f) an assessment of the likely impact on the Upper Tribunal.

(2) The documents required by subsection (1) must be published and laid before Parliament no later than three months before any provision establishing the IIAA is brought into force.

- To move the following Clause—

“Annual reporting on the Independent Immigration Appeals Authority

(1) The Secretary of State must, in respect of each financial year, prepare and lay before Parliament a report on the operation of the IIAA.

(2) A report under subsection (1) must include—

- (a) the total expenditure incurred in operating the IIAA during the reporting period;
- (b) the average time taken to determine appeals;
- (c) the number of appeals received, determined, withdrawn and outstanding;
- (d) the number and proportion of appeals allowed and dismissed;
- (e) the number of applications for permission to appeal to the Upper Tribunal arising from decisions of the IIAA;
- (f) the number and proportion of IIAA decisions set aside, remade or overturned on appeal;
- (g) an assessment of the impact of the IIAA on waiting times within the immigration and asylum appeals system;
- (h) an assessment of the impact of the IIAA on legal aid expenditure; and
- (i) such other information as the Secretary of State considers appropriate.

(3) The first report under this section must be laid before Parliament no later than 12 months after the commencement of any provision establishing the IIAA.

(4) Subsequent reports must be laid before Parliament annually.”

Member’s explanatory statement

These amendments would require the government to produce and publish a fully evidenced impact assessment before implementation and annually after that.

Part 2 - Article 8 of the ECHR

35. Our relationships with our families can be our most precious and meaningful connections, whether they are with the family we are born into or the one we create for ourselves. This is what Article 8 protects – the ability of everyone to form our family, stay by their side and make important decisions about our lives together.

36. While the ECHR recognises there are instances when other factors affect this, it is only right that there should be a fair process for ensuring that intruding on – and potentially separating – a family is justified and proportionate.

Clause 18: Family life definition

37. The definition of ‘family life’ in clause 18 states it should be “normally” limited to the “core cohabiting family”, which is defined in the Bill as relationships between spouses, civil partners or partners, or between a child under the age of 18 and their parent, where the people live together.

38. Placing a greater emphasis on requiring cohabitation (by integrating this into the central definition) would be a significant move away from the current position in UK law and a substantial narrowing of Article 8 protections.

39. Some flexibility is created by clause 18(4), which would allow exceptions to be made where there is a “genuine and subsisting” parent-child relationship. This does not, however, address the position of spouses, civil partners or partners who do not live together. Instead, the Bill reiterates that family life will not exist unless a couple are cohabiting, which is a significant departure from the current approach in law and guidance¹⁶ and could breach human rights in some cases. The Bill’s definition would apply in all immigration matters, and there are many reasons why a couple may not live together, such as where one must move for work or (in the case of refugees) where they have become separated due to war or persecution. **The Bill must make provision for establishing when non-cohabitating couples have family life for the purposes of Article 8.**

¹⁶ UK Visas and Immigration, ‘Relationship with a partner’ (8 October 2024). Available at: https://www.gov.uk/government/publications/relationship-with-a-partner-caseworker-guidance/relationship-with-a-partner-accessible#Durable_relationship

40. Such tightening of protections makes it important that flexibility is retained which allow exceptions to be made in recognition of the many forms that modern family life can take. ECtHR case law is clear that whether family life exists is a question of fact which must be determined on a case-by-case basis.¹⁷
41. Further exceptions are permitted where “additional elements of dependence” are established between adults. Some flexibility in how dependency is to be determined is retained, albeit narrowed through the provision of a list of factors which it is stated are not, on their own, sufficient to establish dependence. It is again important that flexibility is also maintained when determining where dependence exists to enable a full and fair examination of people’s particular circumstances and their family dynamic.
42. ECtHR case law on Article 8 has made clear that the additional elements of dependence test does not require “exclusive” dependence¹⁸ – meaning the family members do not have to be the *only* available source of support. It is enough for dependence to be established if that support is or would be provided by the family members in question and the person is not required to instead seek alternative available means of support. In this regard, **new section 117AA(5)(b)(iii) is likely to be incompatible with Article 8 ECHR and should be removed**, as this states that dependency will not be established where someone is physically or mentally ill if they would still receive adequate care and support from an alternative source with the country where they are located.

Suggested amendments:

- Clause 18, page 15, line 32, at end insert -

“(3A) Where a person, A, has a spouse, civil partner or partner, B, with whom A does not live, A does not normally have a family life with B for the purposes of Article 8 unless there is evidence that A has a genuine and subsisting relationship with B.”

Member’s explanatory statement: *This new subsection would allow non-cohabiting couples to establish the existence of family life where they have a genuine and subsisting relationship.*

- Clause 18, page 15, leave out subsection (4)(a)

Member’s explanatory statement: *This amendment is consequential on the amendment above.*

- Clause 18, page 16, leave out subsection (5)(b)(iii))

¹⁷ *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, para.140, 24 January 2017

¹⁸ *Martinez Alvarado v. the Netherlands*, no. 4470/21, para.49, 10 December 2024

Member's explanatory statement: *This amendment ensures that establishing additional elements of dependence does not require exclusive dependency, in line with the UK's obligations under Article 8 ECHR.*

- Clause 18, page 16, line 16, at end insert -

"(5A) Nothing in subsection (4) or (5) requires exclusive dependency of A on B."

Member's explanatory statement: *This amendment ensures that establishing additional elements of dependence does not require exclusive dependency, in line with the UK's obligations under Article 8 ECHR.*

Public interest test - clause 19

43. The Bill makes significant changes to the 'public interest' test used when determining Article 8 challenges. These changes would apply in all immigration cases, not just in relation to deportation.

Proportionality

44. Clause 19(4) amends the balance of consideration so that "no weight" shall be given to family life established while someone is in the UK without leave. This appears to be an attempt to bar a full proportionality assessment and leaves no room for accepting even the most compelling circumstances, such as where someone was brought to the UK as a child and honestly believed that was done lawfully.

45. Immigration status is already a factor taken into consideration when deciding Article 8 cases. However, preventing a full examination sets up a conflict with the obligations of both the Home Secretary and the courts to act compatibility with Convention rights under section 6 of the Human Rights Act, and risks incompatibility with Article 8 ECHR. **We therefore recommend that changes must be made to the weight given to family life established while someone is in the UK without leave, to a degree which enables individualised proportionality assessments to be carried out.**

Suggested amendment:

- Clause 19, page 17, line 3, leave out "no" and insert "little"

Member's explanatory statement:

This amendment ensures that an adequate proportionality assessment may still be conducted in cases where a person is challenging a decision based on private

or family life established while they were in the UK without leave, while still achieving the Government's aims of attaching less weight to this.

Protection of children

46. Clauses 19(6) and (7) would significantly weaken the protection of children. Clause 19(7) appears to attempt to displace the best interests of a child as the primary consideration¹⁹ when considering if it is reasonable for them to be expected to leave the UK where a parent is facing removal, even where the parent has committed no crime. The factors to be considered are instead limited to narrow criteria which prevent a nuanced assessment of their needs. **At a minimum, subsection 7 of clause 19 should be removed from the Bill.**

Suggested amendments:

- Clause 19, page 17, line 15, leave out "very"

Member's explanatory statement:

This amendment ensures protection for the best interest of the child by reducing the proposed threshold for determining when a parent's removal would have a significant and long-lasting adverse effect on the child.

- Clause 19, page 17, line 17, leave out subsection (7)

Member's explanatory statement:

This amendment ensures the protection of children by maintaining the current approach of determining the best interest of the child in reference to their individual circumstances.

The 'independence' test

47. Clause 19(2) would broaden the 'financial independence' element of the domestic public interest test, currently contained in section 117B of the Nationality, Immigration and Asylum Act 2002. Under the Bill's new formulation, in order for an application on the grounds of the right to private or family life to be successful a person must prove that they are - and will continue to be - financially independent, able to house themselves and any dependents, and not reliant on public services, including health and social care services.
48. No detail has been provided on how the elements of this test are to be determined and what evidence might be required to satisfy them. This leaves significant questions over whether, for example, a minimum income threshold may be applied, whether the applicant must have already secured housing, or whether

¹⁹ Section 55, Borders, Citizenship and Immigration Act 2009

medical records need to be provided.

49. It is especially puzzling how the Government proposes to determine that a person's independence will continue into the future – potentially indefinitely – as income, housing and health can all be subject to rapid and drastic change. **To ensure parliament can properly scrutinise these provisions, the Government must provide further detail on how the financial independence test will be determined and what evidence would be required.**
50. As acknowledged in the Government's human rights memorandum at paragraph 27, the new criteria (particularly requiring that a person is "not, and are not likely to become, reliant on public services, in particular health or social care services, in the long-term") are also likely to result in discriminatory outcomes for especially vulnerable protected groups, such as older or disabled people, who are more likely to be refused or removed. **Government should provide further detail on how this is to be mitigated and applied proportionately.**

Suggested amendment:

- Clause 19, page 16, line 34, at end insert -

"(2A) Before commencement of subsection 2 of this section, Government must lay before both Houses of Parliament statutory guidance regarding how the provisions of subsection (2) are to be determined, the evidence required to satisfy those provisions and how any disproportionate effects on those with protected characteristics are to be mitigated."

Member's explanatory statement:

This is a probing amendment to seek clarification from the Government about how the independence factors set out in Clause 19(2) are to be determined, the evidence required to satisfy those provisions and how any disproportionate effects on those with protected characteristics are to be mitigated.

Criminal offences and good character requirement

51. Clause 19(3) states that it is in the public interest that anyone seeking to enter or remain in the UK must not have been convicted of a criminal offence either in the UK or any other country, and is of good character. The broad formulation of both criteria impedes an appropriate assessment of when it would be proportionate to deny someone entry or the ability to remain in the UK.
52. The requirement that someone not have a criminal history should allow the seriousness or circumstances of the crime to be taken into account, as well as how long ago it was committed and whether there has been no reoffending. Without that, someone who has committed a low-level offence may be treated in the same way as those who have committed serious crimes, and also those who have been convicted as the result of persecution or of something that is not a crime in the UK could have their immigration or asylum applications denied.

53. Further detail should also be provided on how the requirement that someone be of “good character” will be applied. Currently, this aspect is both broad and vague. It is a new concept in this context, and no guidance is given as to how it should be applied, or whether existing guidance for applying the good character requirement in naturalisation decisions under the British Nationality Act 1981 is to be used.

Suggested amendments:

- Clause 19, page 17, line 1, at end insert –

“(3AA) For the purposes of section 3A(a), the following factors should be taken into account when determining the public interest –

- (a) The seriousness and circumstances of the offence committed
- (b) the length of time since the offence was committed
- (c) whether there have been any instances of reoffending.”

Member’s explanatory statement:

This new subsection would ensure that, where the public interest test is being applied to someone convicted of a criminal offence, account is taken of the seriousness and circumstances of that offence, the length of time since the offence was committed and whether there have been any instances of reoffending.

Good character requirement

- Clause 19, page 17, line 1, at end insert –

“(3AA) Before commencement of subsection 3A(c) of this section, Government must lay statutory guidance regarding how the requirement of good character is to be applied.”

Member’s explanatory statement:

This is a probing amendment to seek clarification from the Government of how the requirement that someone be of good character is to be applied in the public interest test.

Foreign national offenders and others liable to deportation

54. Current legislation states that deportation of foreign criminals, defined as any foreign national offender sentenced to more than one year imprisonment, is in the public interest. It applies limited exceptions for challenging deportation of a foreign criminal on grounds of:
- a. long residence and integration combined with “very significant obstacles” to integration in the country they would be removed to, or
 - b. that the effect of removal would be “unduly harsh” on a qualifying partner or child.

For those sentenced to over four years' imprisonment further restrictions are placed through a third category of exceptions:

- c. the existence of "very compelling circumstances" over and above categories (a) and (b)

55. Clause 20 retains these limited categories of exceptions through which deportation can be challenged on Article 8 grounds. What is changed by clause 20 is who these exceptions apply to. Clause 20 would instead provide that the public interest requires the deportation of anyone liable to deportation – not just foreign national offenders – unless one of these exceptions applies. This includes those who the Secretary of State is seeking to deport based on their discretionary power that to do so is "conducive to the public good".²⁰
56. Deportation has serious consequences for family relationships. While there is no absolute protection for a foreign national not to be deported, it is right that we should be able to make sure that it is a proportionate consequence.
57. The existing, and retained, tests are strict and difficult to satisfy in practice. Applying these tests to everyone liable to deportation – rather than those who have committed a sufficiently serious crime – reduces the ability of Home Office decision-makers and the courts to ensure a justified and proportionate outcome. While the 'unduly harsh' test was held to be compatible with Article 8 by the ECtHR in *Unuane v UK*,²¹ whether it would continue to be compatible is less clear should it be applied to those who have committed no crime at all and are facing deportation on the basis of the Secretary of State's discretion.
58. When combined with the changes in clause 19, the impact on children will be particularly severe. Children's ability to argue for protection of their rights is reduced under both provisions, with the likely result that more children will be separated from their parents.
59. **We recommend that the restricted exceptions should continue to apply to only foreign criminals.**

Suggested amendments:

- Clause 20, page 17, line 36, leave out "person" and insert "foreign criminal".

Member's explanatory statement: *This amendment maintains the current initial threshold for who the exceptional circumstances criteria for challenging deportation apply. The criteria would apply to anyone who has received a prison sentence of 1 year or more, in line with the definition of 'foreign criminal' in section 32 of the UK Borders Act 2007.*

²⁰ Immigration Act 1971, section 3(5)(a)

²¹ *Unuane v The United Kingdom*, no. 80343/17, 24 November 2020

- Clause 20, page 18, line 32, leave out “very”.

Member’s explanatory statement: *This amendment reduces the threshold for the third set of exceptional circumstances in Clause 20 from requiring “very exceptional circumstances” to “exceptional circumstances.”*

Retrospective application

Clause 52(9) would allow commencement regulations to apply the Bill’s new definition of family life and public interest test (Part 2) retrospectively, allowing new legal rules to affect cases, decisions and family relationships that arose before those rules were in place. As a basic principle of the rule of law, people should be able to understand the rules that apply to them and make decisions on that basis and Government should not move the goalposts after the event.

That safeguard is particularly important where legislation affects fundamental rights and may determine whether families can reach safety and remain together. **The power to commence Part 2 retrospectively should be removed.**

Suggested amendment:

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

Member’s explanatory statement: *This amendment removes subsection 9 of clause 52 which would allow regulations to commence any provision of Part 2 of this Bill with retrospective effect.*

Part 5 - Modern Slavery

60. Identifying modern slavery victims early and helping them escape abuse is in all our interests. Modern slavery protections do not just offer a lifeline to those who are exploited, they are one of the tools that Government can use to tackle modern slavery itself. It helps people reach safety, gives the authorities evidence and supports stronger action against organised criminals to build safer communities. The Bill risks moving in the opposite direction and undermining the Government’s own aims of tackling trafficking and exploitation.

Penalisation for late disclosure and inconsistent accounts

61. It is well documented that the trauma caused from experiencing slavery and exploitation affects the ways information about the experience is disclosed and how victims may present. Home Office guidance itself acknowledges that victims may be reluctant to come forward out of fear, not recognise that they have been trafficked or enslaved, and present accounts that are disordered or have

errors.²² Late disclosure or jumbled accounts of experiences and timelines are not on their own evidence that a claim is not credible. It is therefore concerning that the government continues in clauses 36 and 38(3) to link late provision or inconsistent accounts to credibility, with the result that someone who may well need protection the most could be denied it.

62. Although the Bill refers to “good” and “compelling” reasons which would be allowed as exceptions, these are not defined and Parliament is being asked to approve the measure before knowing what this includes. The Bill must be clear that trauma, coercion, other factors indicating particular vulnerability and lack of timely legal advice must be considered. The Government should legislate in line with the Home Office’s guidance to ensure that victims of modern slavery have the support and time to come forward with their experiences.

Suggest amendments:

- Clause 36, page 38, line 22, at end insert -

“(3A) For the purposes of subsection (3), good reasons may include, but are not limited to, the effect of -

- (i) physical or psychological harm
 - (ii) coercion, duress or undue influence
 - (iii) other factors indicating particular vulnerability
 - (iv) lack of timely legal advice
- on the ability or willingness of a person to disclose information.”

Member’s explanatory statement: *This new subsection provides a non-exhaustive list of good reasons that the Secretary of State should consider when deciding whether delay in a person making a claim they are a victim of slavery or human trafficking or delay in providing information should be taken as damaging the person’s credibility.*

- Clause 38, page 42, line 23, at end insert -

“(4A) For the purposes of subsection (4)(b), compelling reasons may include, but are not limited to, the effect of -

- (i) physical or psychological harm
 - (ii) coercion, duress or undue influence
 - (iii) other factors indicating particular vulnerability
 - (iv) lack of timely legal advice
- on the ability or willingness of a person to disclose information.”

²² Home Office, ‘Modern Slavery: statutory guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and non-statutory guidance for Scotland and Northern Ireland (version 4.3)’, Chapter 3. Available at: <https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims/modern-slavery-statutory-guidance-for-england-and-wales-under-s49-of-the-modern-slavery-act-2015-and-non-statutory-guidance-for-scotland-and-northe#bookmark38>

Member's explanatory statement: *This new subsection provides a non-exhaustive list of compelling reasons that the Secretary of State should consider when deciding whether a claim that a person is a victim of slavery or human trafficking has been made in bad faith.*

Public order disqualifications must account for forced criminality

63. The Government's explanatory notes explain that disqualifications from protection on the grounds of public order (PODs) are being significantly extended by bringing into force section 29 of the Illegal Migration Act (IMA),²³ as well as further extensions in clause 38 of the Bill.
64. These provisions – and section 63 of the Nationality and Borders Act 2022 which came before them – seek to implement Article 13(3) ECAT's public order exception to a mandatory recovery and reflection period. However, the proposed low threshold for establishing a person is a threat to public order is a disproportionately wide and distortive use of this exception.
65. The Law Society and groups with experience of directly supporting modern slavery victims have repeatedly raised concerns that PODs do not account for forced criminality, where a person has been compelled to commit crimes as part of their exploitation. Forced criminality is a common feature of modern slavery and research has shown that a high number of those disqualified under the existing POD regime have been acknowledged to have had an element of criminal exploitation in their case.²⁴
66. The currently applicable POD regime, as set out in section 63 of the Nationality and Borders Act 2022, excludes those convicted of a range of offences, primarily offences linked to terrorism or threats to national security. However, section 63(3)(f) also excludes those who have been convicted of a crime for which they were sentenced to imprisonment of one year or more. This could include shoplifting, theft or fraud, as well as a range of immigration offences – all of which are crimes which victims of trafficking and exploitation may be forced to commit by their abusers.
67. The Law Society opposed section 29 IMA during its legislative passage. This extends disqualifications by:
- removing the Secretary of State's discretion for deciding whether to apply a POD, making disqualification for anyone meeting the criteria automatic, except for where there are "compelling circumstances"

²³ Immigration and Asylum Bill: Explanatory Notes (n10) para.294

²⁴ Magugliani, Dr Noemi, Trajer, John and Gauci, Dr Jean-Pierre, 'Assessing the Modern Slavery Impacts of the Nationality and Borders Act: One Year On' (June 2024) pp.36-39. Available at: https://www.antislavery.org/wp-content/uploads/2024/06/NABA_report_ATMG_FINAL.pdf

- reducing the threshold for disqualifications due to criminal convictions, to include anyone convicted of any offence for which there was a sentence of imprisonment for any length
 - applying PODs to anyone who is liable to deportation, which could include anyone arriving irregularly by virtue of the illegal arrival offence (distinct from illegal entry) created by section 40 of the Nationality and Borders Act.
68. Clause 38(2)(i) extends this even further by amending section 29 IMA to provide that suspended sentences also result in public order disqualifications.
69. This greatly exacerbates problems with the existing POD regime. Imposing a duty to disqualify anyone who receives even a short sentence for a low-level offence they were forced to commit widens the scope for penalising victims, preventing them from supporting law enforcement and placing them at risk of re-trafficking.
70. Creating the ability to disqualify anyone arriving in the UK irregularly would further cut off a vital means of identifying who is being smuggled, from where and in what numbers. This would severely restrict the UK's ability to catch people smugglers and disrupt their operations.
71. We **recommend that Government should refrain from bringing into force section 29 IMA and remove clause 38(2)(i) from the Bill.** However, this will not fully address the issues created by the domestic POD regime which should be further examined and addressed, including by **repealing section 63(3)(f) of the Nationality and Borders Act 2022.**

Suggest amendments:

- Clause 38, page 41, line 33, leave out sub-paragraph (i)

Member's explanatory statement: *This amendment would remove subsection (2)(i) to retain the current position that a suspended sentence is not grounds for disqualifying someone from modern slavery protections on the ground of public order.*

- To move the following Clause -

"Repeal of modern slavery disqualification from protection provisions

(1) Section 29 of the Illegal Migration Act 2023 is repealed.

(2) Section 63(3)(f) of the Nationality and Borders Act 2022 is repealed."

Member's explanatory statement: *This new clause for Part 5 of the Bill repeals section 29 of the Illegal Migration Act 2023 and section 63(3)(f) of the Nationality and Borders Act 2022 to ensure the use of modern slavery protection disqualifications on the grounds of public order are compliant with the UK's*

obligations under the Council of Europe Convention on Action against Trafficking in Human Beings.

Removal of duty to grant leave to remain to assist recovery

72. Grants of limited leave to remain to victims of modern slavery are already very rare, with just 4% granted permission in 2024.²⁵ Clause 39 seeks to reduce access to this protection further by removing the duty under section 65 of the Nationality and Borders Act 2022 to grant limited leave to remain to a confirmed victim of modern slavery following a positive conclusive grounds decision, where this is necessary to assist their recovery.
73. This risks contravening Article 14(1) ECAT which requires member states to issue a "renewable residence permit to victims" where "their stay is necessary owing to their personal situation". **We recommend that clause 39 be removed from the Bill.**

Suggested amendment

- We recommend indicating on the amendment sheet an intention to oppose the Question on clause stand part for clause 39

Slavery and human trafficking statements

74. We welcome the measures in clauses 44 to 49 and Schedule 5 of the Bill as a step forward in improving transparency in business supply chains through the introduction of enhanced mandatory reporting and enforcement powers, and extending reporting obligations to public bodies. The Law Society recommended the introduction of such measures in its response to the Government's 2019 Transparency in Supply Chains consultation.²⁶
75. While these provisions are welcome, potential weaknesses remain if businesses who are subject to reporting obligations are allowed to avoid identifying and taking steps to mitigate risks of modern slavery or human trafficking in their supply chains as long as "reasons" are provided as to why they have not done so. We encourage the government to clarify what reasons will be sufficient.

Suggested amendment

²⁵ ATLEU, ECPAT UK and Helen Bamber Foundation, *Road to Nowhere: The impact of insecure immigration status of survivors of trafficking* (July 2025) p.18. Available at:

<https://www.helenbamber.org/resources/reportsbriefings/thousands-confirmed-trafficking-victims-denied-permission-stay-uk-and>

²⁶ See: <https://www.lawsociety.org.uk/topics/human-rights/modern-slavery-act-2015>

- To move the following Clause -

"Reasons for not providing information - slavery and human trafficking statement

The Secretary of State must lay before both Houses of Parliament statutory guidance on acceptable reasons for not providing in slavery and human trafficking statements the information detailed in Schedule 5 of this Act."

Member's explanatory statement: *This is a probing amendment to seek clarification from the Government of what reasons are acceptable for not providing in slavery and human trafficking statements the information required in Schedule 5 of this Act.*