



Immigration and Asylum Bill

Briefing for Second Reading – Monday 13 July 2026

About Us

The Bar Council represents approximately 18,000 barristers in England and Wales. It is also the Approved Regulator for the Bar of England and Wales. A strong and independent Bar exists to serve the public and is crucial to the administration of justice and upholding the rule of law.

Summary

The Bar Council has reservations about Part 1 of the Immigration and Asylum Bill (Bill), which proposes to establish an adjudicator appeals authority in substitution for the role presently played by the First-tier Tribunal (Immigration and Asylum Chamber). In addition, it has concerns about Part 2 of the Bill and the proposals made in respect of the interpretation and application of Article 8 of the European Convention on Human Rights (ECHR). Both matters concern the rule of law, access to remedies, and compliance with international legal obligations that the United Kingdom has freely assumed. The Bar Council takes no position on the substantive policy choices in the Bill as they concern protection status and asylum, asylum support, and modern slavery.

This briefing has been prepared in the short time between publication of the Bill and the date set for its Second Reading in the House of Commons. While this briefing deals solely with Part 1 of the Bill, consideration of Part 2 of the Bill and Article 8 ECHR will be included in the next briefing for Committee Stage.

The proposed 'Independent Immigration Appeals Authority'

Part 1 of the Bill proposes the establishment of an 'Independent Immigration Appeals Authority' (IIAA) to decide appeals on matters such as protection claims (e.g., in relation to refugee status), human rights (e.g. family life matters), Withdrawal Agreement EU citizens' rights cases, and deprivation of British citizenship. This new body will replace the function of the First-tier Tribunal (Immigration and Asylum Chamber) (FTT).

The key features of this proposed body include:

- (i) appeals being decided by executive adjudicators who need hold *no legal qualification* at all (presently FTT Judges require a judge to have held a legal qualification for 5 years),
- (ii) the appointment of those adjudicators by the Chief Executive of the IIAA (the first Chair being appointed by the Home Secretary, the latter being a party in all immigration appeals) instead of by the Lord Chancellor (as is the case with FTT judges),
- (iii) a stated objective that does not simply seek to deal with cases fairly and justly (as the FTT must at present) but rather which seeks to integrate the adjudicative process into the executive Home Office 'immigration and asylum system',
- (iv) the ouster of the supervision of the High Court by way of judicial review of IIAA functions and decisions,
- (v) rules of procedure to be made not by the independent Tribunal Procedure Committee (as with the FTT) but by an IAA controlled board,

- (vi) the power to control expedited appeal timetables to rest solely with the Home Secretary (who is one party in every appeal), and
- (vii) non-legally qualified adjudicators to be given the power to charge (fine) an appellant's representative (who may be a barrister) on the basis of so-called improper conduct.

The Bar Council makes two principal points. First, it considers that it is in the interests of justice that the persons who decide immigration appeals are legal qualified, as FTT judges are at present. When an immigration appeals system was first set up under the Immigration Appeals Act 1969 and thereafter by the Immigration Act 1971, there was no requirement for adjudicators (as they were then called as well) to be legally qualified.

In the operation of the appeals system under the Immigration Act 1971, the quality of adjudicators and their decisions were criticised by service users and others. The problem occasioned by the lack of legal qualifications for office was rectified finally by the Immigration and Asylum Act 1999, which imposed a requirement for adjudicators to hold a legal qualification for 7 years (or hold equivalent legal and other experience). In practice, all new appointments were legally qualified thereafter.

The proposal to remove the requirement for persons deciding appeals to be legally qualified lacks any convincing justification. Appeals ought to be decided by legally qualified persons. The judicial branch of government in its various iterations in courts and tribunals makes use of qualified lawyers to decide cases. That ensures high quality and legally sound dispute resolution. There is no good reason to depart from that approach. The proposed adjudicators ought to be required to hold the same minimum legal qualification as FTT judges. To have adjudicators with no legal qualification deciding appeals increases the risk of material legal error in the decisions made, with attendant practical and cost implications occasioned by the need to rectify or otherwise overcome them.

Second, the Bar Council considers that it is in the interests of justice that persons deciding appeals ought to be appointed by the Lord Chancellor and not by the Home Secretary (or IIAA appointees accountable to the Home Secretary). Under the Immigration Act 1971 adjudicators were appointed by the Secretary of State for the Home Department (i.e. the Home Secretary, one party in every appeal). The appearance of bias and want of independence and impartiality was criticised. Those criticisms formed the backcloth to the action taken by the Thatcher Government in 1987 when it transferred the appointment of adjudicators away from the Home Secretary to the Lord Chancellor (by The Transfer of Functions (Immigration Appeals) Order 1987).

Today, immigration FTT judges are appointed by the Lord Chancellor as part of the organisation of the judicial branch of government. There is no case for the Home Secretary or body charged with furthering the immigration and asylum system to appoint the persons who decide appeals to which they are a party. Under the Constitutional Reform Act 2005 the Lord Chancellor must have regard to the need to defend the independence of the judiciary, as well as to the need for the public interest in regard to matters relating to the judiciary or otherwise to the administration of justice to be properly represented in decisions affecting those matters. By such existing means, the public interest is protected in all its variety. There is no cogent case made to take away the Lord Chancellor's role.

Both these principal points lead to two further ones. Firstly, in the promotion of the United Kingdom's legal and political values, the principle of the separation of powers between Ministers/the government, Parliament, and the judiciary requires respect. In addition, but distinctly, the independence and impartiality of those charged with deciding cases in the judicial branch of

government is a core British legal value to be protected. Parliament needs to consider carefully whether these proposals, sponsored as they are by a Minister who is a party to every immigration appeal, pays the necessary respect to these principles.

Secondly, as regards the efficacy of the proposed IAA, both the common law and the ECHR require remedies to be real and not theoretical or illusory. Such defects (set out above at (i) to (vii)) in the proposals for the procedure and operation of the IAA (which will find the facts in appeals before it)) remain despite the existence of an onward appeal to the Upper Tribunal on a point of law.

Conclusion

Part 1 of the Immigration and Asylum Bill requires further consideration. In the Bar Council's view persons deciding immigration appeals should be legally qualified as they are at present. Further, such persons ought to be appointed by the Lord Chancellor and not by the Home Secretary. Considering all aspects of Part 1 separately and as a package, Parliament ought to consider carefully whether the proposals are consistent with the separation of powers principle, the need to ensure the independence and impartiality of those persons deciding immigration appeals, and the need for remedies to be effective.

The Bar Council will provide a more detailed briefing on these matters, as well as on Article 8 ECHR as it is considered in Part 2 of the Bill, for the next stage.

The Bar Council
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