Independent Monitoring Authority
For the Citizens' Rights Agreements

The Independent Monitoring Authority's response to the Home Office Call for Evidence on the new Independent Appeals Body – 6 May 2026

About the IMA

1. The Independent Monitoring Authority for Citizens' Rights Agreements (IMA) is an independent, non-departmental public body. The IMA monitors how public bodies in the UK and Gibraltar are implementing citizens' rights under the EU Withdrawal Agreement (WA) and the EEA EFTA Separation Agreement (SA) (together, 'the Agreements'). We promote the rights of EU and EEA EFTA citizens, and their family members, in the UK and monitor how UK public bodies are respecting and protecting those rights. Our response to the consultation is therefore focused on this cohort only, who we will refer to as 'EU and EEA EFTA citizens and their family members' or 'citizens' for ease.

2. The IMA is an Arm's Length Body (ALB) of the Ministry of Justice (MoJ). Our decisions are taken independently and made with impartiality, ensuring that we play a vital role in holding public bodies to account. Our relationship with the MoJ is governed by our Framework document.[1] Being an ALB of the MoJ, rather than the Home Office, helps to ensure our independence from the public body that we most often scrutinise.

The IMA's interest in this call for evidence

3. Although the deadline to apply to the EU Settled Scheme (EUSS) passed on 30 June 2021, people continue to apply to the EUSS, including late applicants (such as children), joining family members, and those converting pre-settled status (PSS) to settled status via manual application. Where applications are refused, an individual has a right of appeal.[2] Rights of appeal also arise where decisions are taken to curtail or deport a person with rights under the Agreements.

4. The First Tier Tribunal of the Immigration and Asylum Chamber (FTIAC) produces data on "EEA Free Movement Appeals".[3] The data on the FTIAC caseload shows an increase in EEA Free Movement Appeals in Quarter 3 of 2025/26, with the FTIAC caseload for these appeals at its highest point since Quarter 3 of 2021/22 (where the graph begins). The statistics also show that EEA Free Movement Appeals represent about 20% of the FTIAC caseload, a

[1] Independent Monitoring Authority for the Citizens' Rights Agreements Framework Document
[2] EUSS refusal decisions have statutory appeal rights under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020.
[3] Tribunal Statistics Quarterly: October to December 2025 - GOV.UK

similar proportion to Human Rights Appeals, with Asylum Protection appeals representing the majority.

5. From 9 April 2026, the Home Office began the process of identifying PSS holders who no longer meet the residency requirements, something that may prompt an increase in appeals in relation to curtailment decisions.

6. Those with EEA Free Movement Appeals, many of whom will have rights under the Agreements, are therefore a significant subset of FTIAC users and will likely remain so for the foreseeable future. Changes to the way their appeals are dealt with are of central relevance to the IMA, and it is vital that any reform accounts for their unique legal status and protections.

Structure of this response

7. We have not responded to every question in the call for evidence and focused instead on answering the questions of most relevance to EU and EEA EFTA citizens and their family members and drawing to the Home Office's attention specific issues arising under the Agreements.

8. Whilst the call for evidence did not specifically request evidence concerning the interaction between these proposals and the UK's obligations under the Agreements, we consider this to be an important factor to draw to decision makers' attention. In terms of the broader themes, we limit our responses to the most relevant points. We also note that the lack of detail contained in the Call for Evidence on these proposals and how the Independent Appeal Body (hereafter 'the Body') will work in practice. Further issues may arise as the proposals crystalize.

9. Our comments focus on 'Theme 1: Access to Justice, Fairness and Procedural Safeguards', 'Theme 3: 'Adjudicator Recruitment, Eligibility, Impartiality and Training' and 'Theme 5 Hearing Methods, Digital Processes and Efficiency' in particular.

Purpose of reforms

10. At the outset we acknowledge a central aim of the proposals is to reduce delays in immigration and asylum appeals being determined. The Call for Evidence states that EEA Free Movement appeals have "*mean times taken of 41 weeks*". The IMA acknowledges the significant impact delay can have on citizens.

11. While the effect of a delay is partly mitigated by the provisions in the Agreements that provide for temporary protection of rights while a decision (or

any review or appeal) on an application is awaited, a lack of granted status can nonetheless create practical barriers for citizens. The IMA's Inquiry into delays in issuing decisions on applications to the EUSS (published 2026) found that whilst a Certificate of Application is intended to protect applicants during this period in practice it is not always recognised or properly understood by employers, landlords, or service providers. As a result, applicants – particularly those with families or unstable living situations – can face significant stress or uncertainty pending a final outcome in their application.[4] We are also aware that certain categories of citizens that are awaiting a decision on their application, whether that is an original decision or appeal, face additional checks at the border before they are able to enter the UK[5].

12. The call for evidence conducted as part of the IMA's Inquiry into EUSS delays also found that prolonged delays to applications being determined had serious and often distressing consequences. These included restricted travel, employment barriers, housing instability, and emotional stress. While this was in the context of EUSS applications being considered by the Home Office, the same may well be true in relation to FTIAC appeals. We therefore agree the issue of delays is an important one.

13. However, at this stage the Home Office has not provided evidence to suggest that replacing the FTIAC with the Body would reduce the appeals backlog. Also, while reducing delays in appeals is an important aim, it cannot come at the expense of good quality, fair and – crucially – independent decision-making. Citizens rely on the FTIAC to apply the law accurately and fairly when the Home Office gets things wrong. It is vitally important that the Body is, and is perceived to be, independent. The decisions of the Body must be robustly quality assured and held to account - not simply through the appeal mechanism to the Upper Tribunal (UT) - and published to ensure transparency. We highlight the need for data collection concerning not just the outcomes and timeliness of decision making by the Body but also the impact of its decisions on those with protected characteristics (race, ethnicity, and nationality in particular). The IMA would have grave concerns about any measure that is likely to lead to a reduction in the quality of review and redress that Home Office decision making is subject to in EEA Free Movement Appeals. It is hard to see how the replacement of members of the judiciary with lay members in the adjudication of appeals would not have that effect.

[4] An Inquiry by the Independent Monitoring Authority into delays in issuing decisions on applications to the EU Settlement Scheme
[5] EU Settlement Scheme: Border Force guidance (accessible) - GOV.UK

14. We note that these proposals come just 2.5 years after the decision was made to abolish the right of administrative review for EUSS refusals and cancellation decisions. From 5 October 2023, administrative review has not been available for an EUSS decision made on or after that date. From 4 April 2024, scope to apply out-of-time for an administrative review of a relevant EUSS decision taken by 5 October 2023 was also removed. During its operation, the administrative review process itself experienced considerable delays, and there remains a backlog. Administrative reviews were carried out internally by Home Office officials without judicial training, but the delays in the system appear to be just if not more significant than in the FTIAC. The Home Office guidance states that people with outstanding administrative reviews can expect to wait "*30 months or more*[6] for an outcome. This is far longer than the mean time of 41 weeks in relation to FTIAC determinations of EEA Free Movement appeals. This indicates there is no guarantee a non-judicial body would be able to decide appeals any quicker than the FTIAC can.

Issues with the proposals

15. We highlight some particular issues with the proposal for the Body to replace the FTIAC as the adjudicator of EEA Free Movement appeals, through the lens of the Agreements.

Rights of access to judicial and, where appropriate, administrative redress procedures and the right to an effective remedy and to a fair trial

16. We are keen to understand how the proposal for the Body will satisfy the rights of citizens to have access to 'judicial and, where appropriate, administrative redress procedures', and, where applicable, Article 47 of the EU Charter of Fundamental Rights (the Charter), which protects the right to an effective remedy and fair trial.

17. The Agreements enabled the UK to require EU and EEA EFTA citizens and their family members to apply for a new residence status, namely settled or pre-settled status under the EUSS. There is a right to redress if a decision is made to refuse residence status (in other words, refuse an EUSS application). Currently, the route of redress is an appeal to the FTIAC.[7] Up until 4 April 2024 there was a right to seek administrative review of a decision on an

[6] EU Settlement Scheme: administrative review - GOV.UK. We acknowledge that the average wait times have increased as the scheme was closed to new applications for administrative reviews.
[7] The Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020, regulation 3. Decisions on EUSS family permits, frontier worker permits, applications as a S2 Healthcare visitor also attract appeal rights under the 2020 Regulations

application under the EUSS but that has since been removed.[8] We understand that the intention is for the Body to provide redress in FTIAC's place.

18. We highlight that redress procedures must comply with Agreements' requirements: "*The redress procedures shall allow for an examination of the legality of the decision, as well as of the facts and circumstances on which the proposed decision is based. Such redress procedures shall ensure that the decision is not disproportionate."*[9]

19. Additionally, where decisions are taken that restrict the residence rights of citizens (e.g. decisions to deport a person) then the Agreements mandate particular safeguards, including a right of appeal against the decision.[10] Whilst the FTIAC generally deals with such appeals at the moment, it is unclear if the intention is for the Body to do so in future.

20. These safeguards incorporated by the Agreements include those contained in Article 31(1) of Directive 2004/38/EC. In equivalent language to the Agreements[11], Article 31(1) states: *"The persons concerned shall have access to judicial and, where appropriate, administrative redress procedures..".*

21. We also note the ongoing relevance of Article 47 of the Charter to the interpretation of the Agreements[12] which protects the right to an effective remedy and to a fair trial. Article 47 states:

> *"**Article 47 - Right to an effective remedy and to a fair trial***
>
> *Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in the Article.*
>
> *Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.*

[8] EU Settlement Scheme: administrative review - GOV.UK
[9] Article 18(1)(r) WA and Article 17(1)(r) SA
[10] see Article 21 of the WA and Article 20 SA, which refer to Chapter VI of Directive 2004/38/EC
[11] Article 18(1)(r) of the WA and Article 17(1)(r) of the SA
[12] In *R (AT) v Secretary of State for Work and Pensions* [2023] EWCA Civ 1307 the Court of Appeal concluded unanimously that the Charter continues to apply to citizens within scope of the Withdrawal Agreement.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice."

22. The Charter would be engaged in at least some EEA Free Movement appeals. Unlike Article 6 of the European Convention of Human Rights (which only covers civil or criminal proceedings), Article 47 Charter covers administrative proceedings including immigration appeals.

23. Finally, the rule of law is a general principle of EU law[13], facets of which include access to justice and judicial independence. The general principles play an ongoing interpretive role in relation to the WA in particular.[14]

Important considerations

24. The proposals on the Body are not at an advanced enough stage to assess their compatibility with the Agreements. Little detail is provided as to how such a body would be constituted, how its independence would be guaranteed and how access to justice would be ensured. At this stage, the following are some key considerations to draw the Home Office's attention to:

    i. **Independence and impartiality.** Judicial independence is an express feature of Article 47 Charter and an important facet of the rule of law, itself a general principle of EU law. We note the Call for Evidence states that the Body will be independent and its adjudicators will make impartial decisions but also that the intention is for it to be *"fully integrated within the wider immigration and asylum system"*. It is not clear to us what degree of separation there would be between the Body and the executive, and the Home Office in particular. Unambiguous operational and constitutional independence from the Home Office (and the executive agencies and NDPBs that fall under the auspices of the Home Office) is vital, given that in almost all instances adjudicators will be adjudicating on Home Office decisions. Relevant factors will include the management of the appointments and disciplinary process for adjudicators. The degree to which the Body is perceived to be independent by the eyes of citizens and adjudicators themselves is also relevant. We would expect that in establishing the Body the Home Office take clear and unequivocal steps to ensures its actual and perceived independence. This would mitigate the risk that the Body is viewed as less impartial and independent than the FTIAC is now, given that it will not be staffed by judges. As well as being

[13] Case 294/83, Parti écologiste "Les Verts" v European Parliament (1986).

[14] Article 4(3) WA states "*The provisions of this Agreement referring to Union law or to concepts or provisions thereof shall be interpreted and applied in accordance with the methods and general principles of Union law."*

subject to a duty to act independently, FTIAC judges must be experienced legal practitioners (regulated solicitors or barristers) who will be used to acting in line with their professional obligations to act with independence. It is not clear whether this will be the case for adjudicators.

ii. **The need for an effective judicial remedy.** In the context of Directive 2004/38 redress procedures (which the Agreements apply), 'an effective judicia l remedy' has been held to be one which permits a review of the legality of the decision as regards matters of "both fact and law".[15] We have concerns as to whether adjudicators without legal expertise would be able to provide an effective judicial remedy and make findings on complex issues of law in particular. The fact that the Body will not be staffed by lay adjudicators rather than judges means robust quality assurance of their decisions is required. We do not consider that the preservation of the right to appeal to the Upper Tribunal on a point of law is a complete answer to this concern. While we acknowledge the presence of lay magistrates in the Criminal and Family courts, a legal adviser is present in those settings to provide legal advice and support to the lay member. It is not clear to us if this is envisaged here. We also highlight the particular complexity of immigration law, and the Agreements in particular, something we provide more detail on at paragraph 26 below.

iii. **The right to a public hearing.** The right to a hearing is a feature of Article 47 Charter. We note that the proposal is for the Body to *"operate on the assumption that most cases will be determined on papers or remotely (through virtual hearings or evidence sessions), with in-person hearings reserved for circumstances where they are necessary to ensure fairness."* We have concerns that, if cases are determined on the papers by default, this would conflict with the right to be heard. We also note there are vulnerable groups who may be less able to engage with a paper-based or remote procedure. The IMA's Delays Inquiry findings pointed to wider questions around the EUSS application process and how accessible it is for all linguistic and digital literacy levels. The inquiry highlighted a number of research pieces which referenced particular groups who experienced digital exclusion.[16] Publication of decisions by the Body will be important to ensure transparency of decision making as will data collection and

[15] Case C-430/10 Gaydarov, EU:C:2011:749

[16] Roma EU citizens in the UK: Ongoing struggles with the EU Settlement Scheme. [online] Available at: https://www.Romasupportgroup.org.uk/uploads/9/3/6/8/93687016/policy_report_version_2. Pdf. Migration Observatory. (n.d.). Outstanding issues facing the EU Settlement Scheme. [online] Available at: https://migrationobservatory.ox.ac.uk/resources/commentaries/outstanding-issues facing-the-EU-settlement-scheme/.

monitoring, in order to assess whether there is a disproportionate impact of decisions on groups with protected characteristics.

iv. **The right to access to justice, including access to legal advice and representation.** Article 47 of the Charter also stipulates that *"Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice."* The Call for Evidence acknowledges that *"Access to justice, including the ability to obtain access to timely legal advice, representation, and the support needed to participate effectively*" is central to ensuring fairness and upholding the rule of law. The IMA has highlighted the difficulties citizens face in accessing quality and regulated immigration advice and support[17]. The end to the funding of Grant Funded Organisations (who previously assisted individuals in the making of EUSS applications) by the Home Office in March 2026 will likely make it harder for citizens to access timely legal support in the context of the EUSS. Importantly, GFO funded organisations included those authorised and regulated by the Immigration Advice Authority (formerly the Office of the Immigration Services Commissioner) to provide immigration advice - helping to ensure ethical and quality standards were adhered to. The IMA receive regular reports that the cuts to GFO funding has and will reduce the ability of third sector and community organisations to provide accredited immigration advice, creating the risk that citizens are forced to seek support from unregulated advisers. The new Body should be designed on the assumption that most people will need accredited representation in complex appeals. Where individuals are unrepresented, adjudicators must take responsibility for ensuring procedural fairness, including by clearly explaining the process, exercising flexibility where appropriate and providing practical support. The system should not rely on appellants being confident, resilient or legally skilled in order to participate effectively.

Referrals to the Court of Justice of the European Union

25. Article 158 of the WA confers on UK courts and tribunals a discretion to refer questions to the Court of Justice of the European Union (CJEU) concerning the interpretation of Part Two of the WA: (*"[the] court or tribunal may request the Court of Justice of the European Union to give a preliminary ruling*") which can be exercised if the court *"considers that a decision on that question is necessary to enable it to give judgment in that case"*. Article 161(2) WA provides that the provisions of Union law governing procedures brought

[17] IMA Advises EUSS Applicants Still Need Support - Independent Monitoring Authority for the Citizens' Rights Agreements

before the CJEU in accordance with Article 267 Treaty of the Functioning of the European Union (TFEU) shall apply to requests for a ruling of the CJEU made pursuant to Article 158 of the WA.

26. The meaning of the term "*court or tribunal*" in Article 267 has been considered by the CJEU on a number of occasions. Relevant factors in determining whether a body meets the definition include; whether it is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is inter partes, whether it applies rules of law and whether it is independent.[18] The proposals refer to the role of the Immigration Appellate Authority (IAA) and how it made decisions on appeals until 1999. We acknowledge that, as far as we are aware, the IAA was at no stage found not to constitute a 'court or tribunal' under Article 267, but it is not clear to us how the new Body will be constituted and in what way it will differ from the IAA. We also note developments in CJEU case law since the IAA was operational, particularly on judicial independence.[19] If the Body was not independent and such, failed to satisfy the definition of 'court or tribunal' in Article 158 WA, that would seriously undermine the operation of the preliminary ruling procedure in relation to citizens' rights.

Particular complexity of WA and SA law

27. We acknowledge that immigration and asylum law as a whole is a complex, fast-changing and specialised area. The cases of EU and EEA EFTA citizens and their family members often raise a multitude of overlapping immigration law issues. For example, a deportation case may raise human rights issues overlapping with EU law issues and issues concerning the Agreements. Different tests and concepts will need to be applied and understood simultaneously. EU and EEA EFTA citizens and their family members have a unique legal status under the Agreements and the protections they are afforded are lifelong.[20] We highlight some particular features of the Agreements that would make them especially complex for adjudicators to apply.
    i. **Direct effect/ supremacy.** The WA has a unique legal status; it has direct effect in UK law and takes supremacy over incompatible UK domestic law provisions (including primary legislation). This makes it quite different to other international law instruments that adjudicators may encounter in their

[18] Dorsch Consult Ingenieurgesellschaft mbH v Bundesbaugesellschaft Berlin mbH Case C-54/96 EUR-Lex - 61996CJ0054 - EN - EUR-Lex
[19] The enclosed European Parliament briefing provides an overview of some of the cases handed down since 2018 Recent ECJ case-law on judicial independence
[20] Article 39 of the WA, Article 37 of the SA

decision making, e.g. European Convention on Human Rights, the Refugee Convention.

ii. **Historical context and grounding in EU free movement law.** Article 4(3) of the WA provides that *"the provisions of this Agreement referring to Union law or to concepts or provisions thereof shall be interpreted and applied in accordance with the methods and general principles of Union law"*. Indeed, much of the WA provisions operate by importing concepts or provisions from EU free movement law, in many areas replicating entire parts of Directive 2004/38/EC. To properly apply the citizens' rights provisions of the Agreements, adjudicators will need a strong level of understanding of EU free movement law as it operated in the UK when it was still a member state. We consider this would be challenging for a non-legally trained adjudicator to have.

iii. **The principle of equivalent legal effects.** Article 4(1) of the WA requires that the provisions of the WA and EU law made applicable by it "*shall produce.. the same legal effects"* in the UK as in the Member States. This would require adjudicators to have a good appreciation of how the CJEU would approach a particular legal issue and relevant CJEU case law on the topic, to ensure consistency in the application of WA law.

iv. **Complexity of domestic implementation.** The Agreements have been implemented via a complex framework of overlapping primary and secondary legislation, guidance documents, and regularly updated immigration rules. The legal position and rights of EU and EEA EFTA citizens and their family members have shifted at key points in time (e.g. before the end of the transition period, after the end of the transition period, after the end of the grace period). Appendix EU Immigration Rules, which implements the EUSS, is regularly updated. The caseworker guidance for determining EUSS applications has been updated 30 times since its introduction.[21] The complexity of Appendix EU to the Immigration Rules has been the subject of judicial comment, in particular its convoluted nature. On occasion, senior judges have not been able to understand its

[21] EU Settlement Scheme EU, other EEA, Swiss citizens and family members

legal effects sufficiently to apply it to the facts before them.[22] It is not clear that adjudicators will have the requisite technical legal skill and experience, and will be subject to the necessary level of accreditation or regulation, to consistently apply these highly complex and continually evolving provisions, when the proposal is for them to not to be trained legal professionals.

[22] See for example the comments of Upper Tribunal Judge Canavan or Deputy Upper Tribunal Judge Mailer at [21] of appeal EA/13870/2021 "A*lthough we could attempt a more detailed analysis citing all the different definitions that one might need to turn to within the wording of paragraph (b)(ii) and Appendix EU, we conclude that it is not a proportionate use of court time. Having spent many hours considering this part of the rules one finds that there is nothing natural or plain about the wording that might reveal its intended meaning. A repeated reading of paragraph (aaa), the associated definitions within the Appendix, and the policy guidance only leads to a 'curiouser and curiouser' situation. Like Alice in Wonderland one falls down a rabbit hole and stumbles across a circular race, with the Eaglet exclaiming: 'Speak English!... I don't know the meaning of half of those long words, and what's more, I don't believe you do either!'."* Decision available here: Tribunal decisions