

This report is only concerned with the compatibility or otherwise of the legislation with Part 2 of the Withdrawal Agreement and Part 2 of the EEA EFTA Separation Agreement. It does not consider the merits more generally of the policy contained in the legislation and does not consider the lawfulness of the legislation beyond its compatibility with the Agreements. This is an interim report as the Immigration and Asylum Bill is draft legislation. The IMA intends to publish further updates as the Bill progresses through Parliament and if the legislation is enacted.

Legislation Monitoring Report	
Title	The Immigration and Asylum Bill (interim report)
Date Legislation considered by the IMA	28 August 2026
Date Legislation in force	Not yet in force. The Bill was introduced in the House of Commons on 30 June 2026.
Relevant Withdrawal Agreement/EEA EFTA Separation Agreement Right(s)	Residence
Overview of the legislation	Policy context The Explanatory Notes to the Immigration and Asylum Bill (“the Bill”) provide that the “<i>Bill focuses on the Government’s aim of establishing a firm but fair immigration system which brings into effect the main reforms announced in the Restoring Order and Control statement in November 2025.</i>” The Government’s Restoring Order and Control statement had three parts: ‘I - Reducing arrivals’, ‘II - Increasing removals’, ‘III - Safe and legal routes’. Reforms to the immigration appeal system fell under the second of those; ‘II - Increasing removals’. The statement goes on to quote statistics concerning the backlog in the appeals system, with a focus on asylum claims. “<i>Unresolved appeals have risen from just 7,000 in early 2023, to 51,000 at the end</i>

	<i>of March 2025. This has resulted in long delays. Between January and March 2025, the average wait time for an appeal was 54 weeks.”</i> We highlight that the Ministry of Justice Tribunal Statistics Quarterly data for the First-tier Tribunal Immigration and Asylum Chamber indicates that EEA Free Movement appeals have generally been disposed of more quickly than Asylum/Protection and Human Rights appeals over recent years. The most recent data, for January to March 2026, shows a marked difference, with mean disposal times of 46 weeks for EEA Free Movement appeals, compared with 67 weeks for Asylum/Protection and 71 weeks for Human Rights appeals.¹ The Bill Impact Assessment states that the Independent Appeals Authority (‘IIAA’) the Bill will establish is “<i>designed to increase capacity and speed up appeals whilst maintaining fairness, independence and quality of decision-making</i>”. The IIAA’s trained adjudicators will “<i>be able to determine a larger volume of cases that is the case today and prioritise appeals in the public interest</i>”. The Impact Assessment does however state: “<i>Although positive impacts are anticipated from faster appeals processing, the scale and timing of these benefits remain unclear, and associated costs are also uncertain. This reflects the fact 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.</i>” Scope of this report This report covers Part 1 and Schedule 2 of the Bill, which create the IIAA. Those provisions engage the UK-EU Withdrawal Agreement (‘WA’) and UK-EEA EFTA Separation Agreement (‘SA’) (together, ‘the Agreements’) because they will significantly alter the way in which citizens’ rights appeals are considered and determined.
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¹ Tribunal quarterly statistics: [Tribunals statistics - GOV.UK](#). The statistics for January – March 2026 are available here: [Tribunals statistics quarterly: January to March 2026 - GOV.UK](#)

	In the course of preparing this report we have reviewed the following Bill documents: 1. The Impact Assessment 2. ECHR Memorandum 3. Equality Impact Assessment Relevance of the Agreements The Agreements enable host States to require EU and EEA EFTA citizens resident in the host State before the end of the post-EU exit transition period on 31 December 2020 (the ‘transition period’), and their family members, to apply for a new residence status in order to access rights contained in the Agreements. This is often referred to as a constitutive system, compared to a declaratory system where citizens are not required to apply for a new residence status. The UK decided to adopt a constitutive scheme under the Agreements and implemented this in the UK by creating settled or pre-settled status under the EU Settlement Scheme (‘EUSS’). Decisions to refuse a citizen’s application for residence status under the EUSS can be appealed. Under Article 18(1)(r) WA and Article 17(1)(r) SA an applicant “<i>shall have access to judicial and, where appropriate, administrative redress procedures in the host state against any decision refusing to grant the residence status</i>”. The provision continues: “<i>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.</i>” Decisions to restrict the residence rights of citizens (e.g. decisions to deport a person) also give rise to a right to access judicial and, where appropriate, administrative redress procedures.² The Bill gives the IAA the responsibility of delivering this redress procedure. This report examines whether that redress procedure complies with the requirements in the Agreements, noting in particular:
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² Article 21 WA and Article 20 SA. In equivalent language to the Agreements, Article 31(1) of Directive 2004/38/EC, which the Agreements apply, states: “*The persons concerned shall have access to judicial and, where appropriate, administrative redress procedures [etc]..*”.

	• The IIAA will have the responsibility of applying the Agreements and the EU law and EU law concepts they incorporate. As well as having the requisite expertise in these complex areas, it will also need to be able to refer questions to the Court of Justice of the EU (CJEU) under Article 158 of the WA, if necessary. This power is reserved to entities that meet the EU law test of ‘court or tribunal’. We consider whether this is met in relation to the IIAA below. • The Agreements require that an applicant has access to ‘judicial redress’.³ Access to administrative redress is only ‘where appropriate’. There is a question as to whether the IIAA will be capable of providing ‘judicial redress’ and examining the ‘legality of a decision’ (as well as the facts on which it is based) and whether it is proportionate when its adjudicators will not necessarily have legal or judicial backgrounds. • Decisions to refuse applications for residence status under Article 18(1) WA, or to restrict residence rights under the Agreements, must comply with safeguards that are found in EU legislation (most notably Directive 2004/38/EC). In applying such EU legislation, incorporated by virtue of the Agreements, it is necessary to (1) ensure they are applied so as to produces the same legal effects as in EU Member States, and (2) to be interpreted and applied in accordance with the methods and general principles of EU law. According, any redress procedure must comply with the right to an effective remedy and fair trial under Article 47 of the EU Charter of Fundamental Rights (EU Charter).⁴ Article 47 provides that: <i>“Everyone is entitled to <u>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. 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.</u>”</i> (emphasis added)
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³ Article 18(1)(r) WA, Article 17(1)(r) SA, Article 31(1) Directive 2004/38/EC.

⁴ 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.

- Our primary concern is whether the IIAA constitutes ‘an independent and impartial tribunal’, something that is addressed further below. Connected to the above, an Agreement compatible redress procedure must comply with the general principles of EU law. Relevant general principles include ‘effectiveness’ and ‘the rule of law’, facets of which include access to justice and judicial independence. The general principles play an ongoing interpretive role in relation to the WA.⁵

What does the Bill do?

Clause 1 establishes the IIAA. The IIAA’s primary function will be to determine immigration appeals, replacing the First-tier Tribunal (Immigration and Asylum Chamber) (hereafter ‘FtT’).

The IIAA will have jurisdiction to hear appeals concerning EU and EEA EFTA citizens, as the FtT does currently. This includes appeals under the Immigration (European Economic Area) Regulations 2016 – insofar as those Regulations continue to have effect following their revocation – and appeals under the Immigration (Citizens’ Rights Appeals) (EU Exit) Regulations 2020. The latter category includes appeals against EUSS decisions, including refusals of settled and pre-settled status. Many (but not all) EUSS applicants fall within scope of the Agreements.

Clause 1(5) of the Bill requires the IIAA to, in the exercise of its functions: “(a) *aim to be accessible, fair and independent, (b) aim to handle its cases quickly and efficiently, and (c) have regard to the public interest, and in particular to the fact that the IIAA operates as a key part of the immigration and asylum system.*”

By contrast, the FtT Rules require cases be dealt with ‘fairly and justly’ (this is the overriding objective).⁶ There is no obligation on the FtT to have regard to the public interest nor its role in respect of the immigration and asylum system. The introduction of this new requirement may be interpreted as signalling that the IIAA should take into account broader government policy objectives in relation to the

⁵ 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.*”

⁶ Rule 2, The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (Consolidated version) [SI/SR Template](#)

	immigration and asylum system, including, for example, the Government's key objective of 'Increasing Removals'. We are concerned that this creates a tension with the concurrent requirement for the IIAA to be accessible, fair and independent. As part of our engagement on the Bill, the Government has informed us that it does not consider that the public interest duty to interfere with the independent determination of individual appeals nor allows broader government objectives to override fairness and the correct application of the law. The Government's position is that the prioritisation of cases in response to the public interest is not, in itself, inconsistent with independent adjudication. Clause 1(6) places every Minister of the Crown under a duty to uphold the independence of the IIAA; they must not seek to influence particular decisions of the IIAA through any special access to IIAA adjudicators. Clause 1(8) excludes decisions of the IIAA in the exercise of, or in connection with, its primary function from judicial review. Decisions may be challenged by way of internal review or right of appeal to the Upper Tribunal ('UT') only. This contrasts with the FtT whose decisions <i>can</i> be judicially reviewed.⁷ We have spoken to immigration practitioners who act in citizens' rights cases who have told the IMA that they do, on occasion, consider making use of the facility to bring judicial review proceedings against the FtT, for example in relation to refusals to extend time to allow an appeal to proceed, a decision that cannot be challenged through UT appeal. The Government's position, communicated to the IMA as part of its engagement on the Bill, is that <i>"the purpose of clause 1(8) is to prevent parties from litigating intermediate procedural decisions separately from the outcome of their appeal. A decision of the IIAA may instead be questioned through the IIAA's power to review its own decisions or on appeal to the UT. Case management decisions in the FtT are usually challenged through the onward appeal route, together with the appeal outcome."</i> We are concerned that this clause lessens the quality and effectiveness of the redress procedure the IIAA will provide as compared to the FtT in citizens' rights cases. This is particularly concerning given
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⁷ See HMCTS Guidance [Apply for a judicial review in an immigration or asylum case - GOV.UK](#)

	the IIAA will be a new body staffed by non-judges who may not be legally trained. The need for judicial oversight by way of judicial review as well as statutory appeal to the UT will likely be <i>greater</i> than it is now. However, it is noted that clause 1(8) concerns decisions of the IIAA in connection with the exercise of its primary function and does not appear to exclude judicial review of the IIAA Procedure Rules. Clause 2 concerns membership of the IIAA. Under the Bill, the non-executive members (the Chair and the Professional Standards Officer), together with the first Chief Executive and first Chief Appeals Officer, will be appointed by the Secretary of State. This may give rise to concerns about the extent to which the IIAA's leadership is institutionally independent from the Home Office. By contrast, the FtT operates within a framework that contains several safeguards designed to support judicial independence from the executive. The Senior President of Tribunals who presides over the FtT is appointed by the King on recommendation by the Lord Chancellor.⁸ FtT judges are appointed by the Judicial Appointments Commission ('JAC'), an independent non-departmental public body sponsored by the Ministry of Justice. The JAC itself is subject to statutory requirements intended to promote independence. For example, its Chair and Commissioners are appointed by the King on recommendation by the Lord Chancellor⁹, civil servants cannot serve as Commissioners, and five must be judicial members, in whose appointment the Judges' Council plays a role.¹⁰ It is recognised that, under clause 2(5) of the Bill, adjudicators are appointed by the Chief Executive of the IIAA rather than by Ministers. However, while the IIAA leadership are required to be selected on merit on the basis of fair and open competition (Schedule 2, para 2(1)), the Bill does not contain comparable safeguards in relation to the appointment of the IIAA's leadership, including the Chief Executive who is responsible for appointing adjudicators. This raises a question as to whether the proposed arrangements provide sufficient institutional separation between the IIAA and the department whose decisions it will be reviewing.
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⁸ Section 2 Tribunals, Courts and Enforcement Act 2007

⁹ Schedule 12, Constitutional Reform Act 2005

¹⁰ Ibid.

	Appeals to the IIAA will be heard by ‘adjudicators’, rather than judges. The Bill provides for two categories of adjudicator: senior adjudicators and executive adjudicators, although it is unclear how responsibilities will be divided between them. Under clause 2(8), a senior adjudicator must be a legal professional with at least two years’ practice experience or have ‘experience in law-related activities’. This contrasts with the current eligibility requirements for judges of the FtT, who are generally required to have at least 5 years’ post-qualification legal experience.¹¹ It is unclear what qualifications or experience will be required of executive adjudicators. Clause 3(2) places responsibility on the Chief Executive for ensuring that the IIAA adjudicators receive adequate training and support. The Bill does not impose any requirement for executive adjudicators to possess legal qualifications or legal training. This is concerning to the IMA given the significant complexity of immigration law as a whole and WA and SA law specifically, and the need for the IIAA to provide effective judicial redress. The IMA set out these concerns in its response to the Home Office Call for Evidence.¹² In brief, the IMA explained that the cases of relevant EU and EEA EFTA citizens and their family members often raise a multitude of overlapping immigration law issues, the complexity of which experienced immigration judges have found challenging. We are concerned that someone without legal training would be unable to apply the law in this area fairly and effectively. Clause 3 relates to the powers and duties of the IIAA members. The Chief Appeals Officer is responsible for ‘<i>organising a system of legal support for IIAA adjudicators</i>’, overseeing the quality of adjudicators’ decisions, and developing a quality assurance mechanism. It is not clear from the Bill whether adjudicators who are not legally qualified will have the benefit of assistance by a legal advisor, in the manner that lay magistrates are supported in the family and criminal courts. We assume this is not the intention.
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¹¹ Judicial Appointments Commission, *Becoming a Tribunal Judge*, available [here](#)

¹² Paragraph 27 of the Independent Monitoring Authority’s response to the Home Office Call for Evidence on the new Independent Appeals Body – 6 May 2026 [Independent-Appeal-Body-CfE-IMA-response.pdf](#)

	Our understanding is also that, unlike FtT judges, IIAA adjudicators will not be subject to individual external regulation. Complaints about misconduct of judicial office holders can be made to the Judicial Conduct Investigations Office ('JCIO'), and many judges are additionally subject to regulation by their professional body, such as the Solicitors Regulation Authority or Bar Standards Board. By contrast, the Bill appears to rely primarily on internal quality assurance and oversight mechanisms in the IIAA. We are concerned that this absence of an external framework for individual regulation limits the accountability of adjudicators. Clause 4 provides that IIAA practice and procedure will be governed by the IIAA Procedure Rules ('the Rules'), made by the IIAA Procedure Rules Board ('the Rules Board') by way of statutory instrument. In making rules, the Rules Board must have regard to the matters listed in clause 1(4) and (5). This includes the public interest and in particular the fact that the IIAA operates as a key part of the immigration and asylum system. Clause 5 concerns the composition of the Rules Board, which will comprise the senior office holders of the IIAA as well as 'any standing members appointed by the Chair'. The Chair, and the senior office holders of the IIAA, will have been appointed by the Secretary of State, at least initially. By contrast, the procedure rules governing the FtT are made by the Tribunal Procedure Committee, an advisory non-departmental public body of the Ministry of Justice.¹³ The composition of the Rules Board may therefore give rise to concerns about the independence of the rule-making process. Such concerns are reinforced by the fact that rules will be made with regard to the fact that the IIAA operates as a key part of the immigration and asylum system, potentially placing greater emphasis on wider system objectives than would be expected in an independent tribunal setting. Clause 6 gives the IIAA the discretionary power to review its own decisions 'once', either of its own volition or following an application by a party. It is not clear on what basis the IIAA will exercise this power and who this decision will be made by. We understand that this will be set out in the Rules (see Schedule 3, paragraph 6 of the Bill). Any review will be carried out by an IIAA adjudicator (clause 6(2))
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¹³ Section 22 Tribunals, Courts and Enforcement Act 2007

	but it is not clear whether the review would be conducted by a different adjudicator and/or a more senior adjudicator to the initial decision maker. Clause 7 creates a right to appeal IIAA decisions to the UT. Like the FtT now, appeals may be brought ‘on any point of law’, and an appellant must first be granted permission to appeal by the IIAA or the UT.¹⁴ Clause 8 provides that it is the Secretary of State, rather than the Rules Board, who may make regulations setting out the time period within which the IIAA must decide an appeal, decide a bail application, or take other procedural steps in proceedings. Before making such regulations, the Secretary of State must consult the IIAA (clause 8(7)). The Explanatory Notes state, at paragraph 78, that: “[t]his enables expedition of cohorts of cases by the Secretary of State following consultation with the IIAA.” Our understanding is that this provision would give the Secretary of State greater influence over the operation of time limits in the IIAA than is currently the case in relation to proceedings before the FtT. We are concerned that this power could be used to expedite particular categories of case in a manner that limits the ability of citizens to prepare and present their cases effectively, potentially impacting the fairness of the redress process. The power could be exercised so as to prioritise other categories of cases, such as asylum appeals, resulting in longer delays for individuals seeking to exercise their appeal rights under the Agreements. Clause 9 gives the Secretary of State the power to make an expedition request to the IIAA where s/he considers that it would be in the public interest for a decision in a particular appeal or bail application, or step in the proceedings, to happen more quickly than it would do otherwise. The IIAA may decline the expedition request on the grounds that ‘<i>it would not be reasonably practicable for the IIAA to comply with the request</i>’ or ‘<i>it would not be in the interests of justice for the IIAA to comply with the request</i>’ (clause 9(3)). It is the Secretary of State, rather than the Rules Board, that has the power to make
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¹⁴ The current internal review process and process by which the FtT decisions are appealed to the UT are governed by section s9 – 12 of the Tribunals, Courts and Enforcement Act 2007.

	regulations concerning the expedition process (clause 9(4)). The IIAA must be consulted on the regulations by the Secretary of State before they are made (clause 9(6)). The detailed operation of the expedition process will likely depend on regulations that have not yet been made. These provisions risk creating an imbalance of power between the parties by giving the Secretary of State, who is typically the respondent in immigration appeals, greater influence over the timing of proceedings than an appellant would have. We acknowledge that the significance of that risk will depend on the content of the regulations and how the process is operated in practice. The Bill provides for only limited circumstances in which the IIAA may refuse the Secretary of State's request to expedite a case. This risks undermining its impartiality and independence from the Secretary of State. Clause 10 gives the IIAA the power to charge a participant to proceedings where it considers is has acted improperly, unreasonably or negligently in a case, resulting in a waste of the IIAA's resources. This is similar to the existing power of the FtT to make wasted costs orders and unreasonable costs orders.¹⁵ Wasted costs orders may be made against legal representatives, whereas unreasonable costs orders may be made against litigants in person. Clause 10 appears to broaden the circumstances in which a litigant in person may be subject to a charge, extending the relevant threshold from acting '<i>unreasonable</i>' to acting '<i>improperly, unreasonably or negligently</i>'. We note from paragraph 85 of the Explanatory Notes that "<i>the detailed operation and safeguards</i>" will be contained in the Rules. The IMA would be concerned by the use of such orders in respect of citizens who are acting as litigants in person, who may be engaging in legal proceedings for the first time without the benefit of representation, may suffer from language or literacy barriers or other vulnerabilities and may be impecunious. Litigants in person may not understand that their conduct is improper or negligent in a way a legal representative should. We query what deterrent effect such charges are likely to have in
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¹⁵ See section 29(4) of the Tribunals, Courts and Enforcement Act 2007 and Rule 9(2)(a) and (b) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

	relation to litigants in person who unlike representatives are likely to be ‘one time’ users of the appeal system. Clause 11 concerns ‘claim notices’. These may be issued to a person liable to removal or deportation and requires them, by a specified date, to provide grounds and reasons for wishing to remain in the UK, details of any relevant immigration status, and any supporting evidence. The consequences of failing to disclose relevant information by that date, including the potential impact on the person’s credibility if they later claim to be a victim of trafficking, are set out in Clause 36, which inserts section 60A(5) into the Nationality and Borders Act 2022. Clause 12 concerns the ‘late claim process’ which applies where a recipient of a claim notice provides information in response after the claim notice deadline, at the point they have been detained or given notice of their departure details. Such claims must, as soon as reasonably practicable, be prioritised by the IIAA over other appeals (clause 12(2)). Whether the late claim process applies is a relevant factor in the decision whether to grant immigration bail (clause 12(3)). Paragraph 104 of the Explanatory Notes states <i>“the provision is intended to support earlier disclosure of claims and enable more efficient and expedited determination of late claims”</i>. This provision has the potential to impact upon citizens who provide status information to the Home Office for the first time when they are in immigration detention or after they have been given a notice of departure. While we appreciate the value in incentivising early disclosure of information by participants to proceedings, there is evidence that citizens experience difficulty understanding their rights under the Agreements. The IMA’s 2025 Citizens’ Rights Survey found gaps in awareness of certain rights and reported that one in five respondents had encountered difficulties exercising multiple rights protected by the Agreements.¹⁶ In these circumstances, there is a risk that individuals (perhaps without access to legal advice) may fail to identify or disclose relevant information concerning their status or rights until a late stage in the process, with potential consequences for the assessment of any subsequent
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¹⁶ IMA’s Citizens’ Rights Survey 2025 can be found [here](#)

	claim/appeal. The operation of these provisions will require careful monitoring to understand the impact on citizens in practice. Clause 13, through amendments to the UK Borders Act 2007, brings the IIAA within the remit of the Independent Chief Inspector of Borders (ICIBI), which will be responsible for inspecting and reporting on the IIAA. The ICIBI is an independent statutory body, appointed by the Home Secretary, whose function is to monitor and report on the efficiency and effectiveness of customs officials, immigration officers, the Secretary of State and the Director of Border Revenue.¹⁷ Although the ICIBI has some experience of appeals-related activity through inspection of the Home Office appeals functions, including the operation of Presenting Officers,¹⁸ the proposal raises two immediate questions. Firstly, whether this oversight mechanism provides sufficient institutional independence. Secondly, whether it is appropriate of tasking a body, whose current functions focus solely on monitoring the effectiveness of the state, with overseeing the effectiveness of a body that is to be treated, by virtue of clause 16(2) of the Bill, as a tribunal. The ICIBI must report on the IIAA at least once a year. Such reports are provided to the IIAA and the Secretary of State, and the latter has a duty to lay a copy of each report (and the IIAA Chief Executive's response) before Parliament. Before doing so, the Secretary of State may decide to omit material on grounds it is '<i>undesirable for reasons of national security</i>' or on the basis it '<i>might jeopardise an individual's safety</i>'. While the Bill already imposes a duty on the Secretary of State to lay ICIBI reports (and the IIAA's responses) before Parliament, the IMA would favour the inclusion of a specified timeframe for doing so, as this would ensure the IIAA's accountability mechanisms, including to Parliament, can operate effectively. Clause 14 allows for the transfer of property, rights and liabilities from the FtT to the IIAA.
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¹⁷ Section 48 UK Borders Act 2007

¹⁸ ICIBI, 'An inspection of the Home Office Presenting Officer function' (November 2019 – October 2020).

	Clause 15 confers a power on the Secretary of State to make regulations specifying descriptions of cases to be decided by the IIAA that would otherwise be decided by the FtT. Clause 16(1) gives the Secretary of State a broad power to make consequential provision. We expect much of the detail concerning how the IIAA will operate will be contained in regulations. Clause 16(2) provides that the IIAA is to be treated as a tribunal for the purpose of any provision in legislation (including primary legislation) that applies in relation to tribunals. Clause 16(3) permits the Secretary of State to amend legislation (including primary legislation) so as to provide that it applies to the IIAA, with amendments, or does not apply to the IIAA. Regulations that amend primary legislation shall be subject to the affirmative resolution procedure (clause 50). This is a broad provision and, in the context of EU and EEA EFTA citizens' rights, changes the interpretation of the term 'tribunal' in numerous instruments. This includes the European Union (Withdrawal) Act 2018, as amended by the European Union (Withdrawal Agreement) Act 2020, the primary legislation that facilitated the UK's withdrawal from the EU in line with the Agreements. Together, they set out how 'retained' or 'assimilated' EU law and WA and SA law is to be treated by courts and tribunals. The IIAA adjudicators will need to apply these complex concepts, something that the IMA considers will be particularly challenging for non-legally qualified members.¹⁹ The IIAA's classification as a 'tribunal' will, subject to the exercise of the regulation-making power, limit the IMA's oversight of its functions. The IMA has a statutory duty to review the adequacy and effectiveness of the exercise by 'relevant public authorities' of functions in relation to Part 2 Agreements.²⁰ Although the IIAA will exercise functions relating to Part 2 by determining appeals arising under Part 2, its status as a tribunal means that it will not be regarded as a 'relevant public authority' for these purposes. Consequently, the IMA would not be able to make recommendations to the IIAA following the completion of an inquiry.²¹
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¹⁹ See paragraph 27 of the Independent Monitoring Authority's response to the Home Office Call for Evidence on the complexity of Separation Agreement law [\[here\]](#)

²⁰ EU (Withdrawal Agreement) Act 2020, Schedule 2, paragraph 22.

²¹ EU (Withdrawal Agreement) Act 2020, Schedule 2, paragraph 25(2).

	The Schedules Schedule 1 makes consequential amendments relating to the IIAA's functions. Relevant to EU and EEA citizens are the amendments to: • Appeals under the Immigration (European Economic Area) Regulations 2016 • Appeals under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 We have not reviewed the consequential amendments in detail other than to note that the Bill substitutes references to the IIAA for those to the FtT in the above instruments. Schedule 2 provides further detail on appointments to the IIAA. IIAA members and employees are not to be regarded as Crown servants (Sch 2, para 1). Sch 2, para 3(3) allows for the removal of non-executive members of the IIAA by the Secretary of State on grounds of misconduct, conflict of interest, or being unable, unfit or unwilling to carry out their functions. The Secretary of State determines the pay and allowances of the non-executive members, and the pay, allowances, terms and conditions of the executive members appointed by the Secretary of State (i.e. the first Chief Executive and the first Chief Appeals Officer). The remaining executive members will be employed on terms and conditions determined by the IIAA itself (Sch 2, para 5(3)). Other employees (including the adjudicators) are appointed by the IIAA on terms and conditions it may determine. Schedule 3 concerns the IIAA Procedure Rules. The Rules may make provision for time limits (Sch 3, para 3), they may restrict the making of repeat applications where one has previously been made (Sch 3, para 4) and they may make provisions that provide that matters can be dealt with without a hearing (Sch 3, para 7). At this stage we reiterate the requirement under Article 18(1)(r) and Article 21 WA²² that the IIAA provide a redress procedure allowing for an examination of the legality of the decision, the facts and
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²² Reciprocal provisions under Article 17(1)(r) and Article 20 of the SA

circumstances, and the proportionality of the outcome. In many cases, we would expect a hearing to be necessary to deliver effective redress, particularly where there is disputed evidence, vulnerable litigants, or serious potential consequences such as deportation. The denial of a hearing may, in some circumstances, raise issues under Article 47 EU Charter, which confers a right to a ‘fair and public hearing’. Whether a hearing is required would need to be considered on a case-by-case basis once the Rules are implemented and operational.

Schedule 3, para 9 concerns advice and representation. The IIAA Procedure Rules may make provision about who may represent people in cases before the IIAA.

The Rules must make provision for a legal advice statement to be provided by the person initiating the appeal or application. In the statement, the person must state whether they have had advice from a qualified person, if not whether they wish to have such advice, and if so, why they have not received the advice yet, and what steps they have taken to obtain it. The person must make a similar statement concerning whether they will be represented by a qualified person, and if they do not have representation but wish to be represented what steps they have taken to arrange it.

We understand from correspondence with the Home Office that if an appellant states they wish to access advice and representation but have been unable to do so, it is anticipated that *“they will be given additional time to do so before the appeal is validated. This is to encourage uptake of suitably regulated advice and representation, reduce delays and avoid disruptions.”* It is not clear to us on what basis a person will be given more time to get advice or representation and the extent to which this will be left to the discretion of adjudicators. We also note that the need to give citizens more time to obtain advice and representation could conflict with clause 9 of the Bill which gives the Secretary of State power to request that the IIAA expedite cases.

The IMA is in favour of measures to increase access to legal advice and representation for citizens in appeals. This is central to ensuring a redress procedure which is Agreement compatible for those who, without legal support, would not be able to access justice. Article 47 of the Charter provides that *“Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be*

	<i>made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.”</i> Shortages of quality immigration advice may create barriers to individuals accessing such advice and representation in practice.²³ The IMA highlighted concerns about access to EUSS advice following the Home Office decision in March 2026 to end funding for grant-funded organisations who previously provided specialist advice on EUSS matters.²⁴ In July 2026, the House of Commons Justice Committee published a report quoting figures from Law Society to the effect that in England and Wales “63% <i>do not have access to an immigration and asylum provider</i>”.²⁵ The Justice Committee raised serious concerns with the functioning of the Exceptional Case Funding scheme which is the way in which legal aid is provided for EUSS appeals in order to prevent breaches of individual rights.²⁶ It is unclear whether measures will accompany this Bill addressing some of the barriers to citizens accessing advice and representation in practice. Schedule 3, paras 10, 11, and 12 makes further provision about the IIAA Procedure Rules and what they may and must cover. Under Schedule 3, para 11 the Rules must make provision for an IIAA adjudicator to treat late submission of evidence as damaging to the credibility of an appellant or applicant for immigration bail. We have highlighted above that citizens may admit evidence late for good reason, for example due to lack of understanding of their rights or lack of representation. Schedule 3, para 13 requires that the IIAA Procedure Rules must provide for (with exceptions) the publication of its decisions. This is a positive step in terms of open justice as FtT decisions are not currently routinely published. This will however likely increase public scrutiny of adjudicators in the press
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²³ Some examples include the work of the Law Society on ‘[legal aid deserts](#)’ and the work of Dr Jo Wilding including her report ‘[No access to Justice 2](#)’

²⁴ [IMA Advises EUSS Applicants Still Need Support - Independent Monitoring Authority for the Citizens' Rights Agreements](#)

²⁵ The report is titled ‘[Access to Justice: Legal Aid](#)’ dated 17 July 2026. It quoted figures provided to it by the Submission from the Law Society of England and Wales to the Justice Select Committee inquiry on access to justice, 30 September 2025.

²⁶ In relation to the Exceptional Case Funding scheme (which is the way in which legal aid is provided for EUSS appeals), the Justice Committee concluded: “*The Exceptional Case Funding scheme does not function as an adequate backstop to ensure the protection of individual rights.*” (at paragraph 142) and made recommendations for reform.

	which could put off prospective applicants²⁷, in turn reducing the pool of quality candidates willing to undertake this high-profile job with integrity and impartiality. Schedule 3, paras 14, 15, 16, 17, 18, and 19 concern provision in the IIAA Procedure Rules about fees, costs and expenses, charges in respect of wastes resources (which is touched on above) as well as other ancillary matters.
Comments	The IMA concerns around the compatibility of the Bill with the Agreements centre on the following three issues: 1. Whether the IIAA will be capable of providing <u>judicial</u> redress The Agreements mandate that, if a person is refused residence status, they shall have access to judicial redress procedures. The same requirement applies if a decision is made to restrict residence rights, such as in deportation appeals where a citizens' ability to remain in the UK may be at stake. To provide 'judicial redress' the IIAA must be capable of effectively examining the legality of the decision; the facts and circumstances underpinning it; and whether the measure is proportionate. In the context of EU and EEA EFTA citizens' rights, this is a highly complex task. For example, a deportation case may raise human rights issues overlapping with EU law issues. The EU general principle of proportionality is context specific and distinct from proportionality under the European Convention on Human Rights ('ECHR').²⁸ Different tests and concepts (international human rights and trafficking law, EU law, WA and SA law, domestic law and guidance) will need to be applied and understood simultaneously by adjudicators. WA and SA law is still at a relatively immature stage, six years on from the end of the transition period. Significant legal questions are yet to be bottomed out.²⁹ As highlighted in the IMA's Call for Evidence response, Article 4(1) of the WA requires that the provisions of the WA and EU law

²⁷ We highlight here the attacks on immigration judges: [Immigration judges too 'scared' to work after Jenrick's comments](#)

²⁸ See paragraphs 23 - 36, *R (Lumsdon and others) v Legal Services Board* [2015] UKSC 41

²⁹ Including for example the test that should be applied in deportation cases of EU nationals and their family members whose residence rights are being restricted based on conduct after the end of the transition period. This is the subject of a Supreme Court appeal [Molnar \(Appellant\) v Secretary of State for the Home Department \(Respondent\) - UK Supreme Court](#)

	made applicable by it “<i>shall produce...the same legal effects</i>” in the UK as in the EU Member States. Adjudicators will need to have a good appreciation of how the CJEU would approach a particular legal issue and relevant case law on the topic, to ensure consistency in application. This has proved a challenging task for members of the senior judiciary³⁰, and we have concerns over whether adjudicators will be able to deliver effective judicial redress in such a complex area, with so much potentially at stake for citizens. 2. Whether the IIAA meets the definition of ‘court or tribunal’ under Article 158 WA It is important for the functioning of the WA that the IIAA meets the test of ‘court or tribunal’ under EU law. Article 158 of the WA confers on UK courts and tribunals a discretion to refer questions to the CJEU concerning the interpretation of Part Two of the WA: “[<i>the</i>] 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 “<i>considers that a decision on that question is necessary to enable it to give judgment in that case</i>”. While we do acknowledge the power is time limited³¹, the purpose behind the provision is to ensure that there is consistency of interpretation between the UK and EU Member States (per Article 4(1) of the WA). The IIAA will be applying WA and EU law concepts and if a question arises as to their interpretation adjudicators will need to identify this and the potential need to make a reference to the CJEU (either itself or following appeal to the UT or above). The Bill classifies the IIAA as a tribunal in domestic law, but whether the IIAA meets the definition of a ‘tribunal’ in Article 158 is determined by reference to EU law on the Article 267 TFEU preliminary reference procedure.³²
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³⁰ The complexity of Appendix EU to the Immigration Rules has been the subject of judicial comment, in particular its convoluted nature –as the IMA highlighted in its Call for Evidence response at paragraph 27.

³¹ The power to make a reference concerning Part Two of the WA only applies “*in a case which commenced at first instance within 8 years from the end of the transition period before a court or tribunal in the United Kingdom*”. In other words, a case must have been commenced at first instance by 31 December 2028, eight years from the end of the transition period, (which ended at 23:00 on 31 December 2020).

³² Article 161(2) WA provides that the provisions of Union law governing procedures brought before the Court of Justice of the EU in accordance with Article 267 TFEU shall apply mutatis mutandis to requests for a ruling of the Court of Justice of the EU made pursuant to Article 158 of the WA. Article 158(1) also confirms that the legal effects in the UK of such preliminary rulings shall be the same as the legal effects of preliminary rulings given pursuant to Article 267 TFEU in the Union and its Member States.

	In the case of <i>Margarit Panicello</i>, the CJEU set out the relevant factors in determining whether a body was a court or tribunal within the meaning of Article 267 TFEU.³³ Factors include: “<i>whether the body 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 <u>whether it is independent</u></i>”. It is the final requirement of independence that the IMA is most concerned about. The CJEU further explained that independence is comprised of two aspects. First, “<i>the court exercises its functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever and is thus protected against external interventions or pressure liable to jeopardise the independent judgment of its members as regards proceedings before them</i>”. Second, the court “<i>seeks to ensure a level playing field for the parties to the proceedings and their respective interests with regard to the subject matter of those proceedings. That aspect requires objectivity and the absence of any interest apart from the outcome of the proceedings apart from the strict application of the rule of law</i>”.³⁴ We have explained below why we consider the Bill risks undermining some of these elements of independence. 3. Whether the IIAA can deliver an effective remedy and fair and public hearing under the WA, in line with Article 47 EU Charter We have explained on what basis Article 47 EU Charter continues to have interpretative relevance to the WA provisions that provide for ‘judicial redress procedures’. These are Articles 18(1)(r) (governing EUSS appeals) and Article 21 (which concerns decisions that restrict residence rights). Such processes need to deliver an effective remedy, in line with Article 47. Robust judicial independence is a core part of Article 47 compliance.³⁵
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³³ C-503/15, EU:C:2017:126. See paragraph 27. Available [here](#)

³⁴ Ibid, paragraphs 37 and 38

³⁵ The linked European Parliament research paper is a useful starting point on the CJEU case law on judicial independence [*ECJ case law on judicial independence](#)

	The ECHR Memorandum accompanying the Bill sets out the basis on which the Home Office considers the creation of the IIAA is compliant with the right to an effective remedy in Article 13 ECHR. There is considerable overlap between Article 13 ECHR and Article 47 EU Charter, but the former is narrower in scope than the latter, which additionally concerns the right to a fair trial (a right the ECHR protects separately via Article 6). The IIAA's compliance with Article 6 ECHR is not addressed in the ECHR Memorandum, likely because immigration proceedings have been held to fall outside its scope, but this is not the case in relation to Article 47 Charter which plainly does cover immigration proceedings.³⁶ Compatibility of the Bill with the EU Charter is a distinct but overlapping question to compatibility with the ECHR and in our view requires independent analysis by the Home Office. In relation to Article 13 ECHR and independence, the ECHR memorandum states: “[Independence]..is secured through the following: (i) a structured and accountable appointments framework; (ii) governance consistent with arm’s-length bodies; (iii) safeguards in initial recruitment; (iv) operational autonomy in staffing; (v) independent rule-making governing appeals via the Procedure Rules Board; (vi) Ministers are under a statutory requirement to uphold the independence of the IIAA; and (vii) external oversight by the Independent Chief Inspector of Borders and Immigration (ICIBI) which provides an additional layer of accountability outside the executive.” This fails to engage with the measures in the Bill that risk undermining the independence of the IIAA, as compared to the FtT. We highlight in particular: i. Regression and the public perception of the independence of the IIAA We acknowledge from the outset that the Government’s stated intention is for the IIAA to be independent. Clause 1(6) places every Minister of the Crown under a duty to uphold the IIAA’s independence, and one of the IIAA’s aims is to be ‘accessible, fair and independent’ (clause 1(5)).
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³⁶ See for example *R (Gudanaviciene & Ors) v The Director of Legal Aid Casework & Ors* [2014] EWCA Civ 1622

	However, the IIAA is less institutionally independent from the Home Office than the FtT. The Bill achieves this through several measures which, taken together, represent a regression in independence and impartiality when compared with the current system. In the case of <i>Repubblika</i>³⁷, the CJEU articulated what commentators have described as a <i>‘principle of non-regression with regard to the rule of law’</i>³⁸ whereby a Member State must prevent <i>‘any regression of their laws on the organisation of justice..., by refraining from adopting rules which would undermine the independence of the judiciary’</i>. It is significant that the IIAA represents a decrease in terms of independence, compared to the current system. Amongst other things, this goes to the way that the IIAA may be perceived by its users and the public. Again, CJEU case law has emphasised the relevance of perception by citizens³⁹, who may legitimately view IIAA adjudicators as less independent than tribunal judges. We note that that concerns about independence have been in responses to the Home Office Call for Evidence by civil society organisations and bodies representing the legal profession.⁴⁰ ii. Functions that appear to go beyond delivering justice The IIAA must in the exercise of its functions aim to be accessible, fair and independent, and handle cases quickly, but also <i>“have regard to the public interest, and in particular to the fact that the IIAA operates as a key part of the immigration and asylum system.”</i> Quoting from the <i>Margarit Panicello</i> case, this calls into question whether it will manage its proceedings <i>‘free from interest other than the application of the rule of law’</i>. We are concerned that introducing this requirement may detract from the adjudicator’s focus on applying the law and delivering justice in the case in front of them, even if that results in outcomes that have difficult consequences for the Home Office or wider immigration system.
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³⁷ E CJ (GC) 20.4.2021, C-896/19, *Repubblika*

³⁸ European Parliament Briefing: ECJ case law on judicial independence A chronological overview [Recent ECJ case-law on judicial independence](#)

³⁹ *European Commission v Republic of Poland* (Case C-204/21), paragraph 377. Available here: [EUR-Lex - 62021CJ0204 - EN - EUR-Lex](#)

⁴⁰ See for example the Law Society response [\[here\]](#) and the Bar Council response [\[here\]](#)

	iii. Involvement of the Home Secretary in IIAA case management and Rules The Secretary of State has the power to request that IIAA cases are expedited, other parties have no such power. There is limited scope for the IIAA to refuse such expedition requests (it must either be not reasonably practicable or not be in the interests of justice). This calls into question whether the IIAA will ensure a ‘level playing field’ between the parties. This may conflict with the need for the individual appellant to have a chance to prepare their case and evidence effectively, and access legal advice or representation. The Secretary of State is also given a significant role in the setting of the IIAA’s case management practices. For example, s/he has the power to make regulations governing the time limits within which the IIAA must decide an appeal, decide a bail application, or take other procedural steps in proceedings. Rules will no longer be made by the Tribunal Procedure Committee, an advisory non-departmental public body of the Ministry of Justice, but by the IIAA’s own statutory Procedure Rules Board responsible for making Procedure Rules. In relation to its rules and procedures, the IIAA is not therefore exercising its functions “<i>wholly autonomously</i>” and “<i>without taking orders or instructions from another source</i>” (again using the terminology in <i>Margarit Panicello</i>). iv. Appointments and terms and conditions of adjudicators The Secretary of State has the power to appoint the Chair, Professional Standards Officer, first Chief Executive and first Chief Appeals Officer of the IIAA, along with the power to determine the pay and allowances of both executive members and non-executive members. Thus, senior appointments within the IIAA fall largely under the Home Office’s control, which casts doubt as to whether the IIAA leadership team will feel able exercise independent judgment from the Home Secretary. The recruitment of (less senior) adjudicators is dealt with by the IIAA itself, without involvement from an external independent body such as the JAC (which holds responsibility for FtT judge appointments). It is not clear from the Bill what the professional requirements of executive adjudicators will be, where they will be recruited from or what their salaries or terms and conditions are likely to be. These questions will have a bearing on their independence; adjudicators should be afforded a level of remuneration
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	commensurate with the importance of the functions they carry out (see <i>Portuguese Judges</i> case⁴¹) and have the necessary professional skills and experience to insulate them from undue pressure. We remain of the view (as expressed in the IMA response to the Call for Evidence) that experienced legal professionals used to acting in accordance with independence obligations imposed on them by their professional regulator would be better placed to exercise independent judgment than lay persons. v. Oversight and accountability Oversight of the IIAA as an organisation will be provided by the ICIBI, who is also appointed by the Home Secretary. It is unclear whether the ICIBI, whose responsibilities currently lie with monitoring the effectiveness of state entities, is an appropriate choice to monitor the effectiveness of a body that is to be treated as a tribunal. Facility to judicially review the IIAA is ousted, limiting the route of challenge available to citizens if the IIAA make decisions that are procedurally unfair to internal reviews or appeals to the UT. There is no external regulation of adjudicators individually, as the JCIO currently provides in relation to the FtT judges. As employees of the IIAA, adjudicators will be subjected to disciplinary oversight of the IIAA itself. In the <i>Romanian Judges Forum</i> case⁴², the CJEU sitting as the Grand Chamber examined aspects of the judicial disciplinary regime, confirming at the importance of the body tasked with carrying out disciplinary investigations into judges “<i>should act objectively and impartially in the performance of its duties and, to that end, be free from any external influence.</i>” Both the senior staff members of the IIAA and the ICIBI, who together have responsibility for discipline and oversight, will be appointed by the Home Secretary, giving rise to impartiality concerns.
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⁴¹Paragraph 47 of the Associação Sindical dos Juízes Portugueses (ASJP) case (C-64/16). Available [here](#)

⁴² Asociația ‘Forumul Judecătorilor din România’ - C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19. See [198] Available [here](#)

Conclusion

We cannot conclude at this stage that the Bill is compatible with the Agreements. We have significant concerns that, if implemented, the introduction of an IIAA will result in a regression to the quality of the redress that citizens within scope of the Agreements currently enjoy. Whether that is sufficient to amount to a breach of the Agreements will depend on how the legislation is implemented and applied in practice, on a case-by-case basis, depending on the exercise of powers by the Secretary of State and the IIAA itself. Much of the policy substance will be contained in regulations and the detail of the IIAA Rules.

The IMA is concerned that the serious risks that this Bill may create in terms of rights protection come with unidentified benefit for citizens. The Home Office aim is to speed up appeals but there is limited evidence at this stage in the Impact Assessment that the creation of the IIAA will achieve that aim. In any event, EEA appeals are not beset by the same delays experienced elsewhere in the tribunal system, most notably in respect of asylum appeals.

Any citizen experiencing difficulties in exercising their rights is encouraged to report a complaint through the [IMA Portal](#).

Further information about the IMA and guidance on how to report a complaint can also be found on the [Website](#).

The IMA will continue to engage with the Home Office on these proposals and appreciates the engagement it has received to date. The IMA has also engaged with stakeholders in the EU citizens' rights sector who have direct expertise in immigration appeals.