

NORTHERN IRELAND HUMAN RIGHTS COMMISSION

Submission to House of Lords on the Immigration and Asylum Bill

November 2026

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1.0 Introduction

1.1 The Northern Ireland Human Rights Commission (NIHRC), pursuant to section 69(1) of the Northern Ireland (NI) Act 1998, is required to keep under review the adequacy and effectiveness of law and practice relating to the protection of human rights in NI.

1.2 The NIHRC is also required, under section 78A(1) to monitor the implementation of Article 2(1) of the Windsor Framework[1] attached to the UK-EU Withdrawal Agreement (Windsor Framework Article 2), to ensure there is no diminution of rights protected in the 'Rights, Safeguards and Equality of Opportunity' chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK's withdrawal from the EU.

1.3 In accordance with these functions, the following advice is submitted to the House of Lords on the Immigration and Asylum Bill (the Bill) and refers to the version of the Bill as introduced in the House of Commons (Bill 105 – 59/2).

2.0 Part 1: Independent Immigration Appeals Authority

2.1 Clause 1 provides for the establishment of the Immigration Appeals Authority (IIAA). Clause 1(2)(a) – (e) sets out its primary function which is to decide appeals against decisions of the Secretary of State relating to protection claims and human rights claims; certain applications for immigration bail; appeals against decisions of Secretary of State on deprivations of citizenship and under Immigration (EEA) Regulations 2016 as they continue to have effect following their revocation and appeals under Immigration (Citizens Rights Appeals) (EU Exit) Regulations 2020.

2.2 It is notable that the range of decisions that the IIAA will have the power to make is wide and includes infringement of rights protected

[1] The Protocol on Ireland/Northern Ireland to the UK-EU Withdrawal Agreement 2020 was renamed by Decision No 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework.

by the European Convention on Human Rights and Fundamental Freedoms (ECHR). The IIAA will be required to make decisions which engage the following: Article 2 (right to life), Article 3 (prohibition of torture and inhuman and degrading treatment), Article 5 (right to liberty and security), Article 8 (right to respect for private life and family life), Article 13 (right to an effective remedy), Article 4 of Protocol No. 4 (prohibition of collective expulsion), Article 34 of the Convention, Rule 39 of the Rules of Court (interim measures) and, in Northern Ireland, Windsor Framework Article 2.

2.3 Clause 1(4) requires the IIAA to "exercise its primary function with a view to ensuring that justice is done". It is not explained how justice, which is broad and could be considered to be a subjective term, is considered to be "done".

2.4 Immigration appeals are presently governed by The Tribunal Procedure (First Tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, Rule 2 of which states that: "The overriding objective is to deal with cases fairly and justly." This includes:

- Dealing with cases in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the recourse of the parties and of the Tribunal;
- Unnecessary formality is minimised and flexibility is sought;
- All parties can participate fully in the proceedings, so far as practicable;
- Any special expertise of the Tribunal is used effectively;
- Unnecessary delays are avoided in so far as compatible with the importance of the issues being considered
- All parties have a statutory duty to cooperate with the Tribunal.

2.5 Clause 1(5) requires the IIAA to (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. Their duties are no longer an "overriding objective" but a more general "aim". "Public interest" is now an aim of the proceedings. Benefits to the well-being of the public/ society as a

whole is a key consideration however the rights of the individual most notably to participate effectively have been omitted. It has been held that Article 8 requires a careful balance of individual rights with rights of the community as a whole.[2] To omit the rights of the individual but consider public interest may represent a breach of ECHR.

2.6 While Schedule 3 provides for statutory rules of IIAA procedure, the NIHRC has insufficient information on which to base any real assessment of their compliance with the ECHR.

2.7 Section 7.0 of this briefing contains the NIHRC's rationale for considering that, by virtue of Windsor Framework Article 2, several EU measures that bound the UK before Brexit and are relevant to this Bill, continue to set minimum standards in NI. These include the EU Procedures Directive (2005).[3]

2.8 Article 39 of the EU Procedures Directive (2005) provides that the applicant must have the right to an effective remedy *before a court or tribunal* against a range of decisions on their application for asylum (emphasis added).[4] Article 39 must be read in the context of the right to an effective remedy in Article 47 of the EU Charter of Fundamental Rights.[5] It is clear that the IIAA is not itself a court or tribunal and will limit the scope for an effective remedy before a court or tribunal in a great many cases which, subject to ongoing litigation on the scope of Windsor Framework Article 2, may amount to a diminution of rights in breach of Article 2.

2.9 Clause 1 (6) states that every Minister of the Crown must uphold the independence of the IIAA and must not seek to influence particular decisions.

2.10 Clause 1 (7) states that the IIAA may do anything it considers

[2] Jeunesse v the Netherlands, *Application No. 12738/10*, judgement of 3 October 2014, at para 106.
[3] Directive 2005/85/EC, 'EU Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status', 1 December 2005.
[4] Directive 2005/85/EC, 'EU Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status', 1 December 2005.
[5] *Martina Dillon and Others v Secretary of State for NI* [2024] NICA 59, at para 126. See also *Secretary of State for Work and Pensions v AT* [2023] EW CA Civ 1307, at para 92; Tobias Lock, Eleni Frantziou, and Anurag Deb, 'The Interaction Between the EU Charter of Fundamental Rights and General Principles with the Windsor Framework' (NIHRC, 2024).

appropriate for the purposes of, or in connection with its primary function.

2.11 Clause 1 (8) states that the IIAA in exercising its primary function may be questioned in legal proceedings only in accordance with Section 6 (power of IIAA to review own decisions) or Section 7 (right of appeal to Upper Tribunal).

2.12 Clause 2 provides for the membership of, and appointments to, the IIAA. The Chair and Professional Standards Officer are non-executive members to be appointed by the Secretary of State. The Chief Executive, Chief Appeals Officer and IIAA adjudicators are appointed by the non-executive members. The Professional Standards Officer, the Chief Appeals Officer members must be legally qualified/ legal executives with at least 5 years' experience or "have experience in law-related activities which, in the opinion of the Chief Executive, makes them as suitable for appointment as if they fell within paragraph (a)".

2.13 It is of concern to the NIHRC that such positions may be held by those who are not legally qualified. This is particularly so given the necessary analysis of competing rights and obligations which apply as a matter of law and for which there is likely very serious consequences. The UNHCR have also warned that replacing First-tier Tribunal judges with decision-makers not required to have legal experience "risks undermining the quality of decisions".[6]

2.14 Robust independence backed by sound knowledge of the law is critically important. Judges are officially appointed by the Lord Chancellor under the statutory framework of the Tribunal, Courts and Enforcement Act 2007. The Lord Chancellor is bound by The Constitutional Reform Act 2006 to defend the independence of the judiciary.[7] The European Court of Human Rights (ECtHR) has held that decisions that are not adequately reasoned and for which the assessment of proportionality for example of the expulsion order is superficial, there was a breach of Article 8 ECHR. The following is directly relevant:

[6] UN High Commissioner for Refugees, 'International Standards and Core Procedural Safeguards to be Considered in Design of the New Appeal Body' (UNHCR, 2026), at para 5.
[7] Constitutional Reform Act 2005, Section 17(1).

If the domestic authorities had conducted a detailed exercise of balancing the competing interests in the case, taking into account the different criteria established in the Court's case-law, and if they had given relevant and sufficient grounds for their decision, the Court might, in line with the subsidiarity principle, have felt able to conclude that the domestic authorities had given their decision in the framework of the margin of appreciation afforded to the respondent State in the sphere of immigration.

That had not been the case. The proportionality of the expulsion order had only been examined superficially. The Federal Administrative Court had emphasised the seriousness of the offence committed, briefly considered the risk of reoffending and mentioned the difficulties which the applicant would have faced on his return to Kosovo. Those had been the only aspects analysed by the court.

Other aspects had been either overlooked or considered very superficially even though they had been relevant criteria under the Court's case-law, including the solidity of the applicant's social, cultural and family links with the host country and the country of destination, medical evidence, the applicant's situation of dependence on his adult children, the change in the applicant's behaviour twelve years after the commission of the offence, and the impact of his seriously worsening state of health on the risk of his reoffending.

These shortcomings prevented the Court from drawing any clear conclusion as to whether the applicant's interests outweighed the interests of expelling him in order to prevent public disorder. In short, the domestic authorities had failed to demonstrate convincingly that the expulsion order issued had been proportionate to the legitimate aims sought to be achieved.[8]

[8] *MM v Switzerland*, Application No. 59006/18, judgment of 8 December 2020.

2.15 Clause 7 sets out the right of appeal to Upper Tribunal. A party to the appeal can do so only on a point of law. At present, decisions of a tribunal are amenable to judicial review. This, as interpreted by the courts, gives a wider basis for challenge as it includes procedural impropriety, irrationality, breach of human rights and proportionality. Importantly, and therefore relevant to breach of Windsor framework, under the EU Procedures Directive (2005) judicial review must not be wholly precluded.[9] In *Brahim Samba Diouf v Ministre du Travail, de l'Emploi et de l'Immigration* it was held that:

> What is important… is that the reasons justifying the use of an accelerated procedure may be effectively challenged at a later stage before the national court and reviewed by it within the framework of the action that may be brought against the final decision closing the procedure relating to the application for asylum. It would not be compatible with EU law if national rules…were to be construed as precluding all judicial review of the reasons which led the competent administrative authority to examine the application for asylum under an accelerated procedure.[10]

2.16 Further concern must be recorded by the NIHRC in connection with independence in relation to Clauses 8 and 9 in that the Secretary of State holds authority over both the Home Office and the IIAA.

2.17 Under Clause 8, the Secretary of State may make regulations setting out the time period within which the IIAA must decide an appeal or bail application or take any other steps in proceedings.

2.18 Clause 9 enables the Secretary of State to make an expedition request to the IIAA. As cited above at para 2.15, the Court of Justice of the European Union (CJEU) has considered the use of accelerated procedures in relation to decisions under the EU Procedures Directive (2005).[11] In the absence of regulations providing for appeal to a court, the NIHRC is of the view that further

[9] Directive 2005/85/EC, 'EU Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status', 1 December 2005.
[10] *Brahim Samba Diouf v Ministre du Travail, de l'Emploi et de l'Immigration*, C-69/10, 28 July 2011, at para 58.
[11] *Brahim Samba Diouf v Ministre du Travail, de l'Emploi et de l'Immigration*, C-69/10, 28 July 2011, at para 58.

attention needs to be given to whether allowing the Secretary of State to determine time periods without any means of judicial scrutiny is in breach of Windsor Framework.

2.19 Clause 10, which permits wasted resources to be claimed from a participant is likely to have a chilling effect. In one case it has been held that the requirement to pay legal costs, despite financial hardship, effectively denied the complainant access to an effective remedy in a case which was also found to have breached a complainant's Article 3 rights.[12]

2.20 Clause 11 sets out when and how claim notices are served. Clause 12 specifies a new process for late claims. Whilst this lacks detail, it is clear that, under Clause 12, late claims can be "fast tracked" much like a previous scheme which was held to be unlawful.[13]

2.21 Clause 15 outlines the power to specify cases to be heard by First-tier Tribunal instead of IIAA. The UNHCR has raised concern in cautioning against reforms that "Experience in other jurisdictions demonstrates that efforts to improve efficiency, when not accompanied by appropriate procedural safeguards and sufficient institutional capacity, can fail to achieve their intended aims and may in some cases exacerbate existing backlogs."[14]

2.22 Clause 16 stipulates that the Secretary of State may make regulations to amend any provision made by or under primary legislation that applies in relation to a tribunal so as to provide that it applies to the IIAA with the amendments, or it does not apply to the IIAA. This gives the Secretary of State a sweeping power to decide whether and to what extent rules that apply to tribunals apply to the IIAA.

2.23 The NIHRC recommends a reconsideration of the IIAA to ensure it is compliant with all legal standards summarised above.

[12] CAT - N.H. v. Switzerland, Communication No. 1024/2020, 30/04/2025.
[13] *The Lord Chancellor v Detention Action* [2015] EWCA Civ 840, at para 49.
[14] UN High Commissioner for Refugees, 'UNHCR Observations on the Immigration and Asylum Bill', (UNHCR, 2026), at para 1.8.

2.24 The NIHRC recommends that judicial scrutiny should be available in all cases and that the above clauses are amended to ensure appropriate judicial authorisation.

3.0 Part 2: Article 8 of the ECHR

Clause 18: Family life

3.1 Clause 18 amends the Nationality, Immigration and Asylum Act 2002 and introduces a statutory 'gateway test' for family life. This will replace the current arrangement by which a judicial inquiry into whether 'family life' is established is conducted as a question of fact. Clause 18(4) will provide that an adult does not normally have a family life for the purposes of Article 8 with another adult unless they live together as spouses, civil partners or partners or the circumstances are such that there is an additional element of dependency beyond normal emotional ties.

3.2 Clause 18(4) goes on to list a number of factors, which when taken independently, should not constitute an additional element of dependency as between two persons. Excluded factors include financial dependency, physical and mental illness, emotional reliance, and concern for welfare due to war, conflict or instability.

3.3 The NIHRC is concerned this approach contrasts with that adopted by the ECtHR. In *Martinez Alvarado v the Netherlands*, the ECtHR confirmed "that the assessment of whether additional elements of dependency, other than normal emotional ties, have been shown to exist, requires an individualised review of the relationship at issue, and other relevant circumstances of the case".[15] In addition in this case the ECtHR afforded "considerable weight to the fact that, given his disability, the applicant's perception of society was very limited, that his immediate family circle constituted most of his world and that for people outside this circle his communications were often incomprehensible".[16]

3.4 The proposed statutory gateway test inhibits a judicial assessment of the circumstances of the individual and may in a case exclude the

[15] *Martinez Alvarado v the Netherlands*, Application No 4470/21, judgment of 10 March 2025, at para 38.
[16] *Martinez Alvarado v the Netherlands*, Application No 4470/21, judgment of 10 March 2025, at para 52.

proper assessment of relevant factors

3.5 **The NIHRC recommends that an amendment to Clause 18 is pursued to ensure courts may assess all relevant factors in individual cases.**

Clause 19: Public interest considerations

3.6 Clause 19 proposes amendment to the Nationality, Immigration and Asylum Act 2002 to reformulate the way in which the 'public interest' is to be treated in immigration appeals.

3.7 Clause 19(2) amends 117B(3) of the Nationality, Immigration and Asylum Act 2002 to provide that it is in the public interest that a person who seeks to enter or remain in the UK is, and is likely to remain, financially independent and able to house themselves and any family members adequately without reliance on State support. Furthermore, a person must demonstrate that it is not likely that they will be reliant on public services, in particular health or social care, in the long-term. It is unclear how an individual can project future health and social care needs. The ECtHR has held that disability amounts to "other status" for the purposes of Article 14.[17] The compatibility of this provision with Article 14 ECHR (protection from discrimination) taken in conjunction with Article 8 would need to be more clearly demonstrated.

3.8 Clause 19(3) inserts a new s.117B(3A) to the Nationality, Immigration and Asylum Act 2002. Section 117B(3A) will provide inter alia that it is in the public interest, and in particular in the interests of the prevention of disorder or crime, that persons who seek to enter or remain in the United Kingdom have not been convicted of a criminal offence (in the United Kingdom or elsewhere), have co-operated with immigration authorities and processes, and are otherwise of good character. The proportionality of a blanket assumption that it is against the public interest for any person convicted of any crime to enter or remain in the UK has not been clearly demonstrated.

3.9 The NIHRC recommends that an amendment be introduced to Clause 19 to provide for the seriousness and relevancy of

[17] *Glor v Switzerland*, Application No 13444/04, judgment of 30 April 2009.

a criminal conviction to be taken into account when applying the public interest test.

3.10 Furthermore, the addition of a 'good character' element without including definition of the term within the Bill or making provision for accompanying guidance raises concerns regarding the proportional application of the new public interest test.

3.11 The NIHRC recommends that a definition of 'good character' is inserted.

3.12 Clause 19(4) provides that "no weight" may be given to family or private life formed while a person requires leave to enter or remain in the UK and do not have it (or obtained it by deception) or if they are in serious breach of a condition attached to their leave to enter or remain.

3.13 Significantly, this is extended to relationships between parents and children. Therefore, a genuine and established relationship can be set aside solely because of the parent's immigration history at the time it was formed. The Commission has concern regarding the compatibility of this provision with Article 14 ECHR (protection from discrimination) taken in conjunction with Article 8. The ECtHR has held that immigration status amounts to "other status" for the purposes of Article 14 and has previously found that refugees permitted to be joined by a spouse married before they fled, but not one married afterwards, faced a difference in treatment the government had not objectively and reasonably justified.[18]

3.14 The NIHRC recommends that a definition of 'serious breach' be inserted to ensure the appropriate limit is applied.

3.15 Clause 19(6) amends s. 117B of the Nationality, Immigration and Asylum Act 2002 to add to the public interest test where a person has a genuine and subsisting parental relationship with a child, to provide that a person's removal would only be contrary to the public interest where the removal would have a very significant and long-lasting adverse effect on a child remaining in the UK. Clause 19(7) prescribes an exhaustive list of conditions which must exist for it to

[18] *Hode and Abdi v UK*, Application No 22341/09, judgment of 6 November 2012.

be considered unreasonable for a child to leave the UK.

3.16 Clauses 19(6) and Clause 19(7) will have the effect of limiting judicial discretion. The ECtHR has been clear that in line with the margin of appreciation, "where the independent and impartial domestic courts have carefully examined the facts, applying the relevant human rights standards consistently with the Convention and its case-law, and adequately balanced the applicant's personal interests against the more general public interest in the case, it is not for it to substitute its own assessment of the merits (including, in particular, its own assessment of the factual details of proportionality) for that of the competent national authorities".[19] The attempt contained within clauses 19(6) and 19(7) to circumscribe judicial discretion and hinder the capacity of the courts to conduct individualised assessments is inconsistent with ECtHR jurisprudence. Furthermore, Clause 19 is notable for not requiring an assessment of the child's best interests. The UN Convention on the Rights of the Child (CRC), at Article 3, requires that whenever actions or laws concern children, their best interests must be a primary consideration. The ECtHR has drawn on this provision in its assessment of asylum cases involving children.[20]

3.17 The NIHRC recommends that Clause 19 is amended to provide that the bests interests of any relevant child are adequately considered in the assessment of the public interest.

4.0 Part 3: Protection Status and Asylum

Clause 21: Core protection: regulations about protection status and protection claims

4.1 Clause 21 of the Bill provides the Secretary of State with a broad power to make regulations "amending any enactment" in respect of protection status and protection claims. These provisions form part of the overarching proposal to replace the existing system of refugee status and humanitarian protection with a single "protection status" as part of the UK Government's new "core protection"

[19] *Unuane v UK*, Application No 80343/17, judgment of 24 November 2020.
[20] *Üner v the Netherlands*, Application No 46410/99, judgment of 18 October 2006, at para 8.

model.[21] Clause 21 defines a person as having protection status if their removal would breach the UK's obligations under the Refugee Convention or breach the UK's obligations in relation to people eligible for humanitarian protection.

4.2 The Bill's Explanatory Notes observe that the new "core protection" model marks a shift "away from an assumption of offering permanent protection, and towards a more basic, and temporary protection".[22] This includes reducing the initial period of permission to stay from five years to 30 months.[23] While the Explanatory Notes advise that the UK Government will "provide support for refugees in accordance with but not exceeding the UK's international obligations",[24] the Bill itself does not contain sufficient detail to demonstrate how a single protection status will operate in practice, as the rights and entitlements attached to it are left to be set out in future regulations.

4.3 The NIHRC reiterates its concern for those who have been determined to be refugees, including measures to shorten leave, restrict family reunion and ensure a longer route to settlement.[25] For many refugees, the conflict or persecution that displaced them is likely to persist for many years, making a swift return unrealistic.[26] Refugees also face a 20-year delay in settlement.[27]

4.4 The NIHRC highlights its concern that Clause 21 does not provide assurance that individuals who meet the definition of refugee under the 1951 Refugee Convention (the 1951 Convention) are explicitly recognised as refugees and enjoy the rights and protections to which they are entitled. For clarity, the 1951 Convention provides

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[21] Home Office, 'Statement of changes to the Immigration Rules: HC 1691', 5 March 2026; Home Office, 'Press Release: Refugee protection to be reviewed every 30 months', 2 March 2026. Available at: Refugee protection to be reviewed every 30 months - GOV.UK
[22] Immigration and Asylum Bill, Explanatory Notes, at para 42.
[23] Home Office, 'Statement of changes to the Immigration Rules: HC 1691', 5 March 2026; Home Office, 'Press Release: Refugee protection to be reviewed every 30 months', 2 March 2026. Available at: Refugee protection to be reviewed every 30 months - GOV.UK
[24] Immigration and Asylum Bill, Explanatory Notes, at para 43.
[25] Letter from NI Human Rights Commission Chief Commissioner to UK Home Office Earned Settlement Consultation, 12 February 2026.
[26] A/HRC/53/26, 'UN General Assembly: Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales - How to expand and diversify regularization mechanisms and programmes to enhance the protection of the human rights of migrants', 20 April 2023; A/78/180, 'UN General Assembly - Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales - Protection of the labour and human rights of migrant workers', 14 July 2023.
[27] Home Office, 'Consultation: A Fairer Pathway to Settlement: A Statement and Accompanying Consultation on Earned Settlement' (HO, 2025). Available at: Earned settlement - GOV.UK.

that recognised refugees are entitled to a range of rights, including access to wage-earning employment (Article 17), housing (Article 21), public education (Article 22), public relief and welfare (Article 23), labour law and social security protections (Article 24), and freedom of movement within the host state (Article 26), together with the issuance of identity and travel documents (Articles 27 and 28). These rights sit alongside core protections against non-refoulement (Article 33), against penalisation for illegal entry by those coming from a territory where their life or freedom was threatened (Article 31), and the overarching requirement that these rights be applied without discrimination (Article 3).

4.5 The NIHRC is concerned that rights, entitlements and safeguards afforded to protection status holders under Clause 21 are not clearly set out in the Bill. Instead, the substance of these changes is left to regulations, which need only be made within one year of Clause 21 coming into force. This concern is heightened by Clause 21(3)(d) and (e). These permit the regulations to insert, amend or remove references to "asylum", "refugee" and "humanitarian protection" in any enactment, and to make different provision for protection status granted on Convention grounds and on humanitarian protection grounds.

4.6 Section 7.0 of this briefing provides an overview of the NIHRC's rationale for considering that, by virtue of Windsor Framework Article 2, several EU measures that bound the UK before Brexit and are relevant to this Bill, continue to set minimum standards in NI. These include the EU Qualification Directive (2004).[28]

4.7 As detailed in section 7.0, the UK Supreme Court found that Windsor Framework Article 2 may be capable of direct effect in conjunction with EU instruments falling within the ambit of the Right, Safeguards and Equality of Opportunity ("RSEO") chapter of the Belfast (Good Friday) Agreement 1998, if the *Demirel* [29] test is met, explaining "It is necessary to identify a clear and precise

[28] Directive 2004/83/EC 'EU Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted', 29 April 2004.
[29] *Lesoochranárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky*, Case C-240/09, 8 March 2011, at para 44, reiterating the test in *Meryem Demirel v Stadt Schwabisch Gmünd,* Case 12/86, 30 September 1987, at para 14.

obligation in EU law by reference to the RSEO chapter."[30] The RSEO chapter of the Belfast (Good Friday) Agreement includes a commitment to incorporate the ECHR into UK domestic law.[31] Subject to any future consideration by the courts, the NIHRC continues to consider that the non-diminution commitment in Windsor Framework Article 2 encompasses EU law that bound the UK before Brexit and underpins or gives expression to rights set out in the ECHR.[32]

4.8 Asylum seekers and refugees are protected by the ECHR, including Article 3 (prohibition on torture, inhuman and degrading treatment), Article 8 (right to family and private life) and 14 (protection from discrimination). Prior to the UK's withdrawal from the EU, aspects of these protections were underpinned by EU asylum measures providing minimum standards, including the Asylum Procedures Directive (2005),[33] Reception Conditions Directive (2003),[34] Qualification Directive (2004)[35] and Dublin III Regulation (2013).[36]

4.9 Article 24 of the Qualification Directive (2004)[37] imposes a duty on States, as soon as possible after international protection has been granted, to issue to beneficiaries of refugee status a residence permit which must be valid for at least three years (36 months) and renewable, unless compelling reasons of national security or public order require otherwise.

4.10 The NIHRC has previously expressed concern about the human

[30] *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 116 and 118.
[31] Belfast (Good Friday) Agreement, 10 April 1998, at Part 6 on Rights, Safeguards and Equality of Opportunity.
[32] This was not considered by the UK Supreme Court in *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15. For more details, please see section 7.0 of this briefing and Northern Ireland Human Rights Commission, 'Submission to the Northern Ireland Scrutiny Committee Inquiry on Article 2 of the Protocol/Windsor Framework' (NIHRC, 2026).
[33] Directive 2005/85/EC, 'EU Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status', 1 December 2005.
[34] Directive 2003/9/EC, 'EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers' 27 January 2003.
[35] Directive 2004/83/EC, 'EU Council Directive on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted', 29 April 2004.
[36] Regulation 2013/604/EU, 'EU Parliament and Council Regulation Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third country National or a Stateless Person (Dublin III Regulation)', 26 June 2013.
[37] Directive 2004/83/EC 'EU Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted', 29 April 2004.

rights impact of the provisions of the Bill,[38] especially when considered within the context of wider reforms to the UK immigration system.[39] The Immigration Rules, as amended in March 2026,[40] reduce the initial period of permission to stay from 5 years to 30 months. Subject to ongoing litigation on the scope of Windsor Framework Article 2, the NIHRC considers that if applied in NI, this may constitute a breach of Windsor Framework Article 2 in falling below the minimum duration of 3 years set by the EU Qualification Directive (2004).[41]

4.11 Furthermore, the NIHRC is concerned about the lack of clarity in Clause 21 of the Immigration and Asylum Bill that those individuals who meet the definition of refugee under the Refugee Convention 1951 will have their minimum rights standards established by the EU Qualifications Directive (2004) respected.

4.12 In the absence of further detail, it is not possible to assess whether those who would currently receive refugee status will retain the rights guaranteed to them by the 1951 Convention. While the regulations will be subject to the affirmative procedure, Parliament will only be able to approve or reject them, rather than amend them. This limits its ability to properly scrutinise and shape changes of this significance.

4.13 The NIHRC recommends that Clause 21 is amended to set out the core rights guaranteed by the 1951 Convention, and to ensure that people granted protection status on Refugee Convention grounds receive rights, entitlements and safeguards no less favourable than those currently attached to refugee status.

4.14 The NIHRC recommends that legal analysis be taken from

[38] Letter from Northern Ireland Human Rights Commission Chief Commissioner to the Chair of Joint Committee on Human Rights Call for Evidence on the Immigration and Asylum Bill, 1 September 2016.
[39] Letter from Northern Ireland Human Rights Commission Chief Commissioner to UK Home Office Earned Settlement Consultation, 12 February 2026.
[40] Home Office, 'Statement of changes to the Immigration Rules: HC 1691', 5 March 2026; Home Office, 'Press Release: Refugee protection to be reviewed every 30 months', 2 March 2026. Available at: Refugee protection to be reviewed every 30 months - GOV.UK
[41] In *In the Matter of an Application by the Northern Ireland Human Rights Commission and JR295 for Judicial Review* [2024] NIKB 35, at para 171, the NI High Court found that the EU Qualification Directive, Directive 2004/83/EC, falls within the scope of Windsor Framework Article 2 Framework. This ruling is subject to appeal in the NI Court of Appeal.

the Home Office on how the core protection proposal respects the minimum standards that the EU Qualifications Directive (2004) guarantees for individuals with refugee status under the Refugee Convention 1951.

4.15 The NIHRC recommends that Clause 21 is amended to raise the initial period of permission to stay to 36 months, in accordance with the minimum standard established by the EU Qualification Directive (2004), in order to ensure compliance with the non-diminution commitment in Windsor Framework Article 2.

Clause 22: Interpretation of Refugee Convention: "lawfully staying"

4.16 Clause 22 of the Bill seeks to insert a new section 37A into the Nationality and Borders Act 2022, to define when a refugee is not to be considered as "lawfully staying" in the UK for the purposes of the 1951 Refugee Convention. The term is not defined in the 1951 Convention, but it determines access to a number of rights and entitlements set out in paragraph 4.4 above.

4.17 Under Clause 22, a person would not be treated as lawfully staying if they fall within Article 33(2) of the 1951 Convention. That is, where there are reasonable grounds for regarding them as a danger to the security of the UK or where they have been convicted of a particularly serious crime and constitute a danger to the community.

4.18 The NIHRC is concerned that Clause 22 conflates two separate concepts within the 1951 Convention. Article 33(2) is a narrow exception to the principle of non-refoulement. It determines whether a refugee may be returned to their country of origin, not whether they are lawfully staying in the host state. The UN High Commissioner for Refugees confirms that, where a decision is taken that Article 33(2) does apply, it does not, in itself, end a person's refugee status.[42] For as long as the individual remains in the UK, they continue to be a refugee and remain entitled to the rights

[42] UN High Commissioner for Refugees, 'UNCHR Observations on the Immigration and Asylum Bill' (UNHCR, 2026), at para 86.

under the 1951 Convention.[43]

4.19 This is particularly significant where removal is not possible. A person falling within Article 33(2) may still be protected from return by other non-refoulement obligations, including under Article 3 of the ECHR and Article 3 of the UN CAT. Where such a person remains in the UK with permission under domestic law, they would remain "lawfully present" for the purposes of the 1951 Convention and entitled to the rights that flow from that. Whether they are also "lawfully staying" should depend on the nature of the leave granted and whether it provides a sufficiently stable basis for residence, rather than being determined automatically by Article 33(2).[44]

4.20 The NIHRC is further concerned about the practical impact of Clause 22 and the consequences for other rights under the ECHR. Restricting access to employment, housing and social security for a prolonged period could interfere with an individual's right to respect for private and family life under Article 8,[45] and in extreme cases, it could risk destitution, engaging Article 3 of the ECHR.[46] Where these restrictions apply to a particular group of individuals on the basis of their status, they may also engage Article 14, read with Article 8, and would require objective and reasonable justification.[47] It is therefore concerning that the Home Office's ECHR Memorandum on the Bill does not include any consideration of Clause 22.[48]

4.21 The NIHRC recommends removal of Clause 22, as it is inconsistent with the 1951 Refugee Convention and also risks incompatibility with the UK's obligations under the ECHR.

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[43] Ibid. See also: *M v Ministerstvo vnitra*, *X and X v Commissaire général aux réfugiés et aux apatrides*, Joined Cases C-391/16, C-77/17 and C-78/17, 14 May 2019, at paras 93-112.
[44] UN High Commissioner for Refugees, 'UNCHR Observations on the Immigration and Asylum Bill' (UNHCR, 2026), at para 87.
[45] *BAC v Greece*, Application no 11981/15, judgment of 13 October 2016; *Hoti v Croatia*, Application No 63311/14, judgment of 26 April 2018.
[46] *R(Limbuela) v Secretary of State for the Home Department* [2005] UKHL 66; *MSS v Belgium and Greece*, Application No 30696/09, judgment of 21 January 2011.
[47] *Hode and Abdi v UK*, Application No 22341/09, judgment of 6 November 2012; *Ponomaryovi v Bulgaria*, Application No 5335/05, judgment of 21 June 2011.
[48] Home Office, 'Immigration and Asylum Bill – European Convention on Human Rights Memorandum'. Available at: Final ECHR Memo - IMMIGRATION AND ASYLUM BILL.

5.0 Part 4: Asylum Support

Clauses 23 and 24: Power to require payments from recipients of asylum support

5.1 Part 4 of the Bill will give the Secretary of State a power to require people who have received asylum support to make a payment towards the cost of that support once their claim has been decided. Clause 23 applies to adults who received accommodation or subsistence support under sections 4, 95 or 95A of the Immigration and Asylum Act 1999, or section 17 of the Nationality, Immigration and Asylum Act 2002, regardless of whether their protection claim was granted or refused. The calculation of payments, the circumstances in which they are required and the process for collecting them are left to regulations.

5.2 Clause 23(5) provides that the regulations must not require a payment where it would make a person destitute, as defined in section 95 of the Immigration and Asylum Act 1999. Clause 23(6) exempts people who were under 18 at all times while receiving support, or who began receiving support before the clause comes into force. Clause 24 provides that the amount payable may reflect support provided to dependants, that unpaid sums may be recovered as a debt, and that payments may be collected through the tax and benefits systems.

5.3 The UK Government has stated that the purpose of Part 4 is to reduce the cost of the asylum support system to taxpayers.[49] It has indicated that it intends to require a flat-rate payment of around £10,000, payable in monthly instalments, and that the full amount must be repaid before a person becomes eligible for settlement.[50]

5.4 Article 29(1) of the Refugee Convention requires that states "shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations". The wording is deliberately broad and allows no exceptions. For instance, Article 29 also applies to refugees present in the territory, without any

[49] Home Office, 'Press Release: Asylum seekers will pay towards costs of accommodation', 30 June 2026.
[50] Home Office, 'Press Release: Asylum seekers will pay towards costs of accommodation', 30 June 2026.

requirement that they are "lawfully staying".

5.5 In its guidance, the UN Office of the High Commissioner reminds States that the sovereign right to determine migration policies "is constrained by the obligations voluntarily assumed by States under international human rights law, as well as customary law".[51] Therefore, "States are obliged to ensure that any differences of treatment between national and non-nationals or between different groups of non-nationals are enshrined in national legislation, serve a legitimate objective, and that any course of action taken to achieve such an objective must itself be proportionate and reasonable".[52]

5.6 UK nationals who rely on the State to prevent destitution, through homelessness assistance or the social security system, are not generally required to repay support lawfully received once their circumstances improve. In practice, asylum support does the same job as homelessness assistance and social security, preventing people from falling into destitution.[53] Eligibility for asylum support is already limited to individuals who are destitute or at risk of destitution and who lack the resources necessary to meet their essential living needs.[54]

5.7 Asylum support also differs from forms of assistance that people choose to take on and expect to repay, such as student or budgeting loans. People seeking asylum are, with very limited exceptions, prohibited from working while their claim is decided. They may only apply for permission to work after 12 months and then only in roles on the Immigration Salary List.[55] In addition, the length of time a person relies on support depends largely on how quickly the Home Office and the appeals system decide their claim, and they typically have no say over where they are accommodated.

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[51] UN Office of the High Commissioner of Human Rights, 'Migration and human rights: Improving human rights-based governance of international migration' (OHCHR, 2015), at 16.
[52] Ibid, at 14-16.
[53] UN High Commissioner for Refugees, 'UNCHR Observations on the Immigration and Asylum Bill' (UNHCR, 2026), at para 93.
[54] Section 95, Immigration and Asylum Act 1999.
[55] Immigration Rules, HC 395, Part 11B, at para 360; Home Office, 'Guidance: Working or volunteering in the UK while an asylum case is considered – updated 26 March 2026'. Available at: Working or volunteering in the UK while an asylum case is considered - GOV.UK; UN High Commissioner for Refugees, 'UNCHR Observations on the Immigration and Asylum Bill' (UNHCR, 2026), at para 89; Immigration Law Practitioners' Association, 'House of Commons Second Reading Briefing: Immigration and Asylum Bill' (ILPA, 2026), at para 120.

5.8 Therefore, the NIHRC agrees with the UN Office of the High Commissioner's conclusion that "[t]he proposed repayment obligation would require refugees to bear a financial burden that is not imposed on UK nationals in comparable circumstances".[56] Accordingly, the NIHRC is concerned that Part 4 may engage Article 14 of the ECHR, read with Article 1 of Protocol 1 and Article 8. Article 1 of Protocol 1 applies to the payment of sums of money, as a person's "possession" and Part 4 would impose this obligation only on people who have received asylum support.[57] The repayment may also affect refugees' ability to reunite with family members and to secure settlement, bringing it within the ambit of ECHR Article 8.[58] Refugee status and immigration status have been recognised as an "other status" for the purposes of Article 14.[59] Any difference in treatment on that basis must therefore pursue a legitimate aim and be proportionate. Where a refugee was prohibited from working throughout the period in which the support was provided, it is difficult to see how requiring them to repay that support could be justified as a proportionate measure.

5.9 Section 7.0 of this briefing provides an overview of the NIHRC's rationale for considering that, by virtue of Windsor Framework Article 2, and subject to ongoing litigation, several relevant EU measures that bound the UK before Brexit, continue to set minimum standards in NI. These include the EU Reception Conditions Directive (2003),[60] Article 13 of which sets the general rules for the provision of material reception conditions and health care that Member States should provide to applicants for asylum. Article 13(2) requires Member States to make provisions on material reception conditions to "ensure a standard of living adequate for the health of the applicants and capable of ensuring their subsistence".[61] Whilst Member States may require applicants to cover or contribute to the cost of material reception conditions, they

[56] UN High Commissioner for Refugees, 'UNCHR Observations on the Immigration and Asylum Bill' (UNHCR, 2026), at para 93.
[57] *Gaygusuz v Austria*, Application No 17371/90, judgment of 16 September 1996.
[58] *Hode and Abdi v UK,* Application No 22341/09, judgment of 6 November 2012.
[59] *Hode and Abdi v UK,* Application No 22341/09, judgment of 6 November 2012; *Ponomaryovi v Bulgaria*, Application no 5335/05, judgment of 21 June 2011.
[60] Directive 2003/9/EC, 'EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers' 27 January 2003.
[61] Article 13(2), Directive 2003/9/EC, 'EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers' 27 January 2003.

can do that only if applicants have "sufficient resources, for example if they have been working for a reasonable period of time".[62]

5.10 To ensure that UK law does not fall below the minimum standard established by the EU Reception Directive (2003), the Home Office should ensure that the proposed requiring people who have received asylum support in the UK to make a payment towards its cost does not result in individuals becoming destitute. Further to the discussion above, in relation to non-discrimination, the EU Qualification Directive (2004) is also relevant.[63] Article 28 requires Member States to ensure that beneficiaries of refugee or subsidiary protection status receive the necessary social assistance, as provided to nationals.

5.11 The minimum standards established by the EU Reception Conditions Directive (2003) requires particular consideration of children and minors. Article 18 stipulates that the best interests of the child shall be a primary consideration for Member States when implementing the provisions of the Directive that involve minors.[64]

5.12 The wellbeing and material conditions of children and minors are intrinsically linked to those of the adults responsible for them. Therefore, the impact of the decision to require an individual who has received asylum support to contribute towards its cost must also be examined in light of the best interests of the child.

5.13 The requirement that the best interests of the child be a primary consideration is included in other relevant EU law that bound the UK before Brexit.[65] In addition, all relevant EU law must be interpreted

[62] Article 13(4), Directive 2003/9/EC, 'EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers' 27 January 2003.
[63] Directive 2004/83/EC, 'EU Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted' 29 April 2004.
[64] Article 18(1), Directive 2003/9/EC, 'EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers' 27 January 2003.
[65] Directive 2005/85/EC, 'EU Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status', 1 December 2005; Directive 2003/9/EC, 'EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers' 27 January 2003; Directive 2004/83/EC, 'EU Council Directive on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted', 29 April 2004; Regulation 2013/604/EU, 'EU Parliament and Council Regulation Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third country National or a Stateless Person (Dublin III Regulation)', 26 June 2013; Directive 2011/36/EU, 'EU Parliament

in light of the EU charter of Fundamental Rights. The Charter has a standalone provision on the rights of children,[66] which further emphasises that in "all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration".

5.14 Article 34 of the 1951 Convention requires state parties to "as far as possible facilitate the assimilation and naturalisation of refugees" and to "make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings". While this relates to naturalisation specifically, settlement is ordinarily the precursor to it.

5.15 The guaranteed speed at which a person may pass through settlement and integration proceedings is also an important safeguard against exploitation.[67] The UN Special Rapporteur on the Human Rights of Migrants advises that, where people are left in prolonged insecurity or without a clear route to regularise their status, they may be pushed to the margins of the labour market and everyday life, increasing dependence and reducing their ability to report abuse or seek help.[68] That is likely to heighten their vulnerability to exploitation, including in work and housing, particularly for those who face barriers to lawful employment or access to basic necessities while their status remains temporary or unresolved.

5.16 The UK Government's indication that the full amount must be repaid before a person can apply for settlement is not contained in the Bill, but it is of significant concern.[69] Under the proposed earned settlement framework, outstanding debt to the UK Government may act as a bar to settlement. A refugee repaying £10,000 in monthly instalments could find their route to settlement delayed

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and Council Directive on preventing and combating trafficking in human beings and protecting its victims', 5 April 2011.

[66] Article 24, EU Charter of Fundamental Rights.

[67] UN Office of the High Commissioner of Human Rights, 'Migration and human rights: Improving human rights-based governance of international migration' (OHCHR, 2015), at Annex 3.

[68] A/HRC/53/26, 'UN General Assembly: Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales - How to expand and diversify regularization mechanisms and programmes to enhance the protection of the human rights of migrants', 20 April 2023; A/78/180, 'UN General Assembly - Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales - Protection of the labour and human rights of migrant workers', 14 July 2023.

[69] Home Office, 'Press Release: Asylum seekers will pay towards costs of accommodation', 30 July 2026.

considerably or in some cases indefinitely.[70] This would sit alongside the 20-year route to settlement under the core protection model. The move from asylum support to independent living is already a financially difficult period, with refugees needing to find a home, furnish it and enter work or training.[71] Imposing a further debt at this point risks undermining their ability to become financially independent, contrary to the purpose of Article 34.

5.17 The repayment obligation may also delay family reunion. Money used to repay asylum support will not be available to meet the costs of family reunion applications, including travel and documentation. The ECtHR has found that delays in the family reunion process for refugees can violate Article 8 of the European Convention on Human Rights, given the particular vulnerability of refugees and the importance of family unity.[72] Prolonged separation from family is also well documented as having a serious impact on refugees' mental health and ability to integrate.[73]

5.18 The NIHRC is concerned about the impact of Part 4 on children. While Clause 23(6) exempts people who were under 18 at all times while receiving support, Clause 24 allows the amount payable by a parent to reflect support provided to their children. Families with children may therefore face larger debts, reducing the resources available to meet their children's needs. The exemption also does not protect young people who turned 18 while receiving support, including those who arrived in the UK as unaccompanied children.

5.19 Article 3 of the UN Convention on the Rights of the Child (UN CRC) requires that the best interests of the child are a primary consideration in all actions concerning children. Children also have the right to benefit from social security (Article 26, UN CRC) and to an adequate standard of living (Article 27, UN CRC), and refugee children are entitled to appropriate protection and assistance (Article 22, UN CRC). Applications for family reunification must be dealt with in a positive, humane and expeditious manner (Article 10,

[70] Home Office, 'Press Release: Asylum seekers will pay towards costs of accommodation', 30 July 2026.
[71] UN High Commissioner for Refugees, 'UNCHR Observations on the Immigration and Asylum Bill' (UNHCR, 2026), at para 98.
[72] *Tanda-Muzinga v France*, Application No 2260/10, judgment of 10 July 2014.
[73] UN High Commissioner for Refugees, 'UNCHR Observations on the Immigration and Asylum Bill' (UNHCR, 2026), at para 100.

UN CRC). Section 55 of the Borders, Citizenship and Immigration Act 2009 also requires the Secretary of State to have regard to the need to safeguard and promote the welfare of children in the UK when exercising immigration and asylum functions.

5.20 The NIHRC recommends that the removal of Part 4 as it is inconsistent with the UK's obligations under 1951 Refugee Convention and the UN Convention on the Rights of the Child, and risks incompatibility with the ECHR and domestic child safeguarding arrangements.

5.21 If Part 4 of the Bill is retained, the NIHRC recommends that assurance is sought from the UK Government that the proposal contained in Clauses 23 and 24 of the Immigration and Asylum Bill does not result in individuals who have received asylum support becoming destitute, which would be in contradiction to the principle established by the EU Reception Directive (2003).

6.0 Part 5: Modern Slavery

Clauses 25 to 34: Prevention and risk orders

6.1 Clause 25(2) of the Bill introduces a new power for a court to make a Slavery and Trafficking Risk Order (STRO) following the acquittal of a defendant for a slavery or human trafficking offence. A court may only make such an order if it is satisfied that there is a risk that the defendant will commit a slavery or trafficking offence and the order is necessary to protect others from harm (s 22A(2)(a)-(b)). In practice, existing guidance issued by the National County Lines Coordination Centre on the use of slavery and trafficking risk orders and slavery and trafficking prevention orders in county lines operations indicates that STROs may already be granted following acquittal in England and Wales.[74]

6.2 The ECtHR has held that human trafficking falls within the scope of Article 4 of the ECHR (prohibition of slavery and forced labour).[75]

[74] National County Lines Coordination Centre, 'Guidance on the Use of Slavery and Trafficking Risk Orders and Slavery and Trafficking Prevention Orders in County Lines Operations' (NCLCC, 2021), at para 4.2.1.
[75] *Siliadin v France*, Application No 73316/01, judgment of 26 July 2005; *Rantsev v Cyprus and Russia*, Application No 25965/04, judgment of 7 January 2010; S.M v Croatia (2008) ECHR 633.

The right to not be held in slavery and servitude, as provided for by Article 4(1) of the ECHR, is absolute and cannot be interfered with under any circumstances. Consequently, States have a positive obligation to ensure that domestic legislative and administrative frameworks protect individuals from trafficking and facilitate the identification of victims.[76]

6.3 In some cases, victims of forced labour and servitude may be subject to threats to life or experience torture or ill-treatment. Articles 2 (right to life) and 3 (freedom from torture) of the ECHR require public authorities to take proactive, reasonable steps when there is a real and imminent risk to life/of torture or ill treatment.[77] In cases where there is a threat to an individual's physical or moral integrity, Article 8 of the ECHR (right to respect for private life may also be engaged.[78] This provision requires that any interference with a person's physical or moral integrity is necessary and proportionate in pursuit of a legitimate aim.[79]

6.4 This range of potential interferences with ECHR rights underscores the importance of an assortment of appropriate measures to prevent and punish trafficking, and to protect victims.[80] As such, preventive civil measures may be appropriate in addition to criminal law measures to deter and punish traffickers.

6.5 There is currently no legislative provision for STROs in NI. The NIHRC has previously recommended to the Department of Justice NI that it introduces STROs and that these are promptly provided for by legislation.[81] However, the NIHRC also cautions that the use of STROs must not become a vehicle by which the criminal law and its inherent protections for the defendant are circumvented. The NIHRC recalls previous statements by the Home Office that "although the proceedings by which these orders are obtained are civil proceedings, the Department accepts that the burden of proof

[76] Ibid.
[77] S.M. v Croatia (2008) ECHR 633.
[78] YF v Turkey, Application No 24209/94, judgment of 22 July 2003, at para 33.
[79] Ibid.
[80] *Rantsev v Cyprus and Russia*, Application No 25965/04, judgment of 7 January 2010, at para 286; *VCL and AN v UK*, Application No 77587/12 and 74603/12, judgment of 16 February 2021, at para 151.
[81] Northern Ireland Human Rights Commission, 'Submission to Department of Justice Consultation on the Draft Modern Slavery and Human Trafficking Strategy' (NIHRC, 2023), at para 3.4; Northern Ireland Human Rights Commission, 'Submission to Department of Justice Consultation on Measures to Strengthen the Response to Modern Slavery and Human Trafficking' (NIHRC, 2022), at para 3.11.

will be akin to the criminal standard".[82] We maintain that prior to the imposition of a STRO, a court must be satisfied beyond reasonable doubt that the person on whom the STRO is imposed will, in the future, be involved in human trafficking or slavery, and that the imposition of a STRO meets the ECHR Article 8(2) proportionality test.[83]

6.6 Clause 31 of the Bill inserts a new section into the Modern Slavery Act 2015 to provide courts with the power to impose an electronic monitoring requirement as part of a Slavery and Trafficking Prevention Order (STPO), whilst Clause 32 provides the courts with the same legislative powers with regard to STROs.

6.7 The NIHRC recognises that electronic monitoring has the potential to enhance compliance with conditions placed upon individuals subject to a STPO or STRO. The NIHRC would highlight that any monitoring must be consistent with, in particular, Article 8 ECHR. The primary purpose of Article 8 ECHR is to protect against arbitrary interferences with private and family life, home, and correspondence by a public authority. In order to determine if the use of electronic monitoring is necessary and proportionate, it must be in accordance with the scope of Article 8 ECHR.

6.8 The NIHRC recommends the development of guidance on the use of electronic monitoring with regard to STPOs and STROs which make specific reference to Article 8 ECHR in terms of meeting the requirements of the monitoring encompassing necessity, proportionality and meeting the pressing social need to protect any potential victim.

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[82] Home Office, 'Draft Modern Slavery Bill, European Convention on Human Rights, Memorandum by the Home Office' (Home Office, 2013), at para 15. Available at: https://www.gov.uk/government/publications/draft-modern-slavery-bill. This is based on the finding in *R v Crown Court at Manchester, ex p. McCann & Others*, [2002] UKHL 39, at para 37 in relation to ASBOs. See also Northern Ireland Human Rights Commission, 'Submission to Department of Justice Consultation on Measures to Strengthen the Response to Modern Slavery and Human Trafficking' (NIHRC, 2022), at paras 3.1-3.29.

[83] Under ECHR, Article 8(2) the right to a private and family life can be interfered with only where necessary in a democratic society and in pursuit of a legitimate aim. The necessity of the interference is evaluated by a proportionality test which balances the legitimate aim against the severity of the interference. See, for example, See for example, *Coster v. UK*, Application No 24876/94, judgment of 18 January 2001, at paras 104 and 106, and *S and Marper v. UK* Application Nos 30562/04 and 30566/04, judgment of 4 December 2008, at paras 101 and 107.

Clause 36: Deciding if a person is a victim: credibility

6.9 Clause 36(2) of the Bill introduces a series of factors that a decision-maker "must take into account when determining whether an individual is a potential victim or a victim of modern slavery", including factors that must be taken into account as damaging a person's credibility.[84]

6.10 These factors include: a) any delay in an individual making a claim, b) any delay in providing relevant information, c) any 'material' inaccuracy, inconsistency or omission, d) any inconsistency between information provided whilst making a claim and information provided in relation to a previous or ongoing protection or human rights claim or any civil or criminal proceedings, and e) any 'striking similarity' between the information provided for a claim and information provided by another individual whilst making a modern slavery or trafficking claim, a protection or human rights claim, or during any civil or criminal proceedings. Clause 36(3) provides that subsection (2) will not apply where the competent authority "is satisfied that there are good reasons for the delay, inaccuracy, inconsistency, omission or similarity" arising.

6.11 The NIHRC recognises the legitimate policy aim of managing issues related to the late submission of trafficking or modern slavery claims made in bad faith, designed to frustrate the operational processes of the immigration system. The NIHRC is concerned, however, by the broad nature of these listed factors and the high degree of discretion provided to a competent authority in deciding whether there are 'good reasons' for any of the listed factors arising. Significantly, these provisions would shift onus onto the potential victim to address credibility concerns, when international human rights law places a proactive duty on the State to identify victims.

6.12 Under Article 4 of the ECHR, the ECtHR has held that where State authorities "were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being" subjected to treatment contrary to Article 4, there will be a violation

[84] Home Office, 'Immigration and Asylum Bill Explanatory Notes' (Home Office, 2026), at para 278.

where "the authorities fail to take appropriate measures within the scope of their powers to remove the individual from that situation or risk".[85] This duty is triggered where the State knew, or ought to have known, of a credible suspicion.[86] It does not depend on the individual identifying themselves as a victim, making a complaint or providing a timely and consistent account.[87] Once the matter has come to the attention of the authorities, they must act of their own motion.[88]

6.13 The ECtHR has also recognised the effect of trauma on a victim's ability to give a clear and consistent account. In *S.M. v Croatia*, the Grand Chamber found a violation of Article 4 where the domestic authorities had "a decisive reliance on the applicant's statement" while failing to follow other lines of inquiry and acknowledging the impact of psychological trauma.[89] The NIHRC is concerned that Clause 36(2) risks treating inaccuracies and omissions as damaging to credibility in precisely the circumstances where the ECtHR has recognised they may be a consequence of the trafficking experience itself.

6.14 When interpreting Article 4 ECHR, the ECtHR pays regard to a number of international instruments, including the Council of Europe Convention on Action against Trafficking in Human Beings (the Anti Trafficking Convention) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations Convention against Transnational Organised Crime (the Palermo Protocol).[90]

6.15 Article 10 of the Anti-Trafficking Convention requires the State to provide its competent authorities with persons who are trained and qualified in identifying and helping victims.[91] Where there are reasonable grounds to believe that a person has been a victim of trafficking, that person must not be removed from the State's territory until the identification process has been completed. The

[85] *VCL and AN v UK*, Application No 77587/12 and 74603/12, judgment of 16 February 2021, at para 152.
[86] *VCL and AN v UK*, Application No 77587/12 and 74603/12, judgment of 16 February 2021, at para 152.
[87] *Rantsev v Cyprus and Russia*, Application No 25965/04, judgment of 7 January 2010, at para 288.
[88] *Rantsev v Cyprus and Russia*, Application No 25965/04, judgment of 7 January 2010, at para 288.
[89] S.M. v Croatia, *SM v Croatia*, Application No 60561/14, 25 June 2020 (Grand Chamber),at para 344.
[90] *Rantsev v Cyprus and Russia*, Application No 25965/04, judgment of 7 January 2010, at para 282.
[91] Articles 10, CoE Convention on Action against Trafficking in Human Beings.

responsibility for identification therefore rests with the State and its trained personnel, rather than with the individual.

6.16 In recognition of the fact that early disclosure is often onerous and unrealistic, Articles 12 and 13 of the Anti-Trafficking Convention provide for a recovery and reflection period of at least 30 days, with the provision of support and protection during that time.[92] Article 14 also requires a renewable residence permit to be issued if a victim's stay is necessary because of their personal situation or for their cooperation with an investigation or prosecution, with specific safeguards to ensure the paramountcy of a child's best interests.[93] Article 26 of the Anti-Trafficking Convention requires the state to ensure victims of human trafficking are not penalised or prosecuted for unlawful acts they were forced to commit as a direct result of being trafficked.[94]

6.17 Section 7.0 of this briefing provides an overview of the NIHRC's rationale for considering that, by virtue of Windsor Framework Article 2, several EU measures that bound the UK before Brexit and are relevant to this Bill, continue to set minimum standards in NI. These include the EU Human Trafficking Directive (2011/36/EU).

6.18 Article 11 (4) of the EU Human Trafficking Directive (2011) requires States to take necessary measures to establish mechanisms aimed at early identification of, assistance and support for victims of trafficking.[95] The Directive also requires that the State attends to victims with special needs, including health conditions and needs deriving from serious psychological, physical or sexual violence they have suffered based on individual assessment of the particular needs and circumstances of the person.[96]

6.19 Article 11(5) of the Trafficking Directive (2011) that assistance and support be provided to victims on a "consensual and informed

[92] Articles 12 and 13, CoE Convention on Action against Trafficking in Human Beings.
[93] Ibid, at Article 14.
[94] Article 26, CoE Convention on Action against Trafficking in Human Beings.
[95] Directive 2011/36/EU, 'EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011.
[96] Article 11(7) and Recital 18, Directive 2011/36/EU, 'EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011.

basis".[97] Mandatory treatment of late information as damaging credibility would arguably sit in conflict with the principle of consensual and informed support. Being made to recall experiences before ready could be retraumatising for a victim. That could amount to breach of Article 12 of the Trafficking Directive (2011) that "Member States shall ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation".[98]

6.20 Clause 36 does not provide for distinct safeguards applicable to child victims of trafficking. Article 13(1) of the EU Human Trafficking Directive (2011) requires that child victims be provided with assistance, support and protection, and that the child's best interests shall be a primary consideration.[99] Article 14(1) also requires assistance and support for child victims, taking into consideration the child's views, needs and concerns.[100] This is relevant for consideration where delayed or inconsistent disclosure may result due to the child's age, vulnerability or lack of understanding. Therefore, Clause 36 should ensure credibility assessments do not undermine support and protection as required under Articles 13 and 14 of the EU Human Trafficking Directive.

6.21 The NIHRC has already raised its concern about similar provisions in the then Nationality and Borders Bill, which would have required the late provision of information, without good reason, to be considered as a factor damaging a claimant's credibility.[101] In respect of the same Bill, three UN Special Rapporteurs additionally stated that treating late provision of information as damaging to credibility would "fail to acknowledge the positive obligation on the State to identify victims of trafficking and contemporary forms of slavery and would fail to recognize the impact of trauma on the provision of information relating to the status of being a victim, including for

[97] Article 11(5), Directive 2011/36/EU 'Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011.
[98] Article 12, Directive 2011/36/EU 'EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011.
[99] Article 13(1), Directive 2011/36/EU 'EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011.
[100] Article 14(1), Directive 2011/36/EU 'EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011.
[101] Northern Ireland Human Rights Commission and Equality Commission for NI, 'Joint NIHRC / ECNI Briefing Paper on the Modern Slavery and Human Trafficking and Electronic Travel Authorisation provisions in the Nationality and Borders Bill' (NIHRC/ECNI, 2022), at paras 4.3-4.5. It is noted that Clause 36 will repeal sections 58 and 59, Nationality and Borders Act 2022, which were never commenced.

child victims."[102]

6.22 Ultimately, the NIHRC considers that the factors as listed in Clause 36 fail to recognise the numerous reasons why a victim may not identify themselves immediately or consistently. For example, the impact of trauma experienced by a victim can affect memory and lead to difficulty recalling experiences.[103] In addition, it can often take a considerable amount of time before a victim is ready to disclose what happened to them, or they may not recognise their situation as exploitation. Further, there may be communicative/language barriers.[104]

6.23 The NIHRC considers that requiring a victim to explain away delay or inconsistency before they can be identified and protected sits in tension with ECHR obligations under Article 4. It is incumbent on the State authorities to take proactive steps to identify potential victims, including by ensuring that an individual is promptly assessed by trained and qualified personnel once a credible suspicion arises.[105]

6.24 Further, the NIHRC notes that Clause 36(2) closely resembles section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004, which requires a decision-maker to take certain behaviour into account as damaging a claimant's credibility. In *JT (Cameroon) v. Secretary of State for the Home Department*, the Court of Appeal held that, while the factors listed in section 8 must be taken into account, they must not be given a status of their own.[106] Instead, they must be considered as part of "a global assessment of

[102] Letter from the UN Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally; UN Special Rapporteur on the human rights of migrants, Felipe González Morales; UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Tomoya Obokata; and UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin to the UK Government, 5 November 2021, at 4.
[103] Letter from the UN Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally; UN Special Rapporteur on the human rights of migrants, Felipe González Morales; UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Tomoya Obokata; and UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin to the UK Government, 5 November 2021.
[104] Northern Ireland Human Rights Commission and Equality Commission for NI, 'Joint NIHRC / ECNI Briefing Paper on the Modern Slavery and Human Trafficking and Electronic Travel Authorisation provisions in the Nationality and Borders Bill' (NIHRC/ECNI, 2022), at para 4.3.
[105] *VCL and AN v UK*, Application No 77587/12 and 74603/12, judgment of 16 February 20212, at para 160.
[106] *JT (Cameroon) v. Secretary of State for the Home Department* [2008] EWCA Civ 878, at paras 16, 19 and 21.

credibility", having regard to all the evidence.[107]

6.25 The NIHRC is concerned that much of the detail on how Clause 36 will operate in practice, including what will amount to 'good reasons' under Clause 36(3), is likely to be left to statutory guidance. Guidance can be amended with limited Parliamentary scrutiny. Leaving the protections required by the ECHR to guidance therefore carries significant risk that those protections will be applied inconsistently or not applied at all.

6.26 The NIHRC recommends the removal of Clause 36(2) from the Bill. If the clause is retained, the NIHRC recommends that it is amended to comply with Article 4 of the ECHR and Windsor Framework Article 2. At a minimum, the Bill and accompanying guidance should make clear that:

a. the State has a duty to take proactive steps to identify potential victims once there is a credible suspicion of trafficking or modern slavery, and this duty does not depend on the individual identifying themselves as a victim;

b. potential victims must be assessed promptly by personnel who are trained and qualified to identify and support victims of trafficking;

c. the factors listed in Clause 36(2) should not be determinative and credibility must be assessed in the round, having regard to all the evidence; and

d. 'good reasons' under Clause 36(3) include, but are not limited to, the impact of trauma, fear of traffickers or of immigration consequences, and the age and particular vulnerabilities of the individual, with the best interests of the child as a primary consideration in all cases involving children.

[107] *JT (Cameroon) v. Secretary of State for the Home Department* [2008] EWCA Civ 878, at paras 16, 19 and 21. See also: *KG (Turkey) v Secretary of State for the Home Department* [2022] EWCA Civ 1578, at para 22.

Clause 37: Recovery period to end on making of negative conclusive grounds decision

6.27 Clause 37 provides that the recovery period, and any associated entitlements afforded to an applicant, be brought to an end following a negative conclusive grounds decision.

6.28 Article 13 of the Anti-Trafficking Convention requires the State to provide a recovery and reflection period of at least 30 days where there are reasonable grounds to believe that a person is a victim of trafficking.[108] The only permitted exceptions are where grounds of public order prevent it, or where it is found that victim status is being claimed improperly.[109] The NIHRC notes that the purpose of the recovery and reflection period is to enable a potential victim to recover and escape the influence of traffickers, and to take an informed decision on cooperating with the authorities.[110]

6.29 Article 11(2) of the EU Human Trafficking Directive requires assistance and support to be provided as soon as competent authorities have a reasonable-grounds indication for believing that the victim may have been trafficked.[111] Clause 37 raises the question of whether an individual will continue to receive the assistance and support required under Article 11 where a negative conclusive ground decision has been made, but is in dispute.

6.30 The NIHRC is particularly concerned by the high proportion of negative conclusive grounds decisions which are overturned on reconsideration. Between January and March 2026, Home Office statistics show that 88 per cent of requests for reconsideration of a negative conclusive grounds decision were successful.[112] The NIHRC is concerned that Clause 37 risks withdrawing support and protection from individuals who are later confirmed to be victims.

6.31 The NIHRC reiterates that the State's operational duty to protect an

[108] Article 13(1), CoE Convention on Action against Trafficking in Human Beings 2005.
[109] Article 13(3), CoE Convention on Action against Trafficking in Human Beings 2005.
[110] Article 13(1), CoE Convention on Action against Trafficking in Human Beings 2005.
[111] Article 11, Directive 2011/36/EU 'EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011.
[112] Home Office, 'Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, January to March 2026' (Home Office, 2026).

individual under ECHR Article 4 (freedom from slavery and forced labour) arises where authorities knew, or ought to have known, of a credible suspicion that the individual had been, or was at real and immediate risk of being, trafficked.[113] Given the current rate at which negative decisions are overturned, a negative conclusive grounds decision will not necessarily remove that credible suspicion.

6.32 The NIHRC is further concerned by the cumulative effect of clauses 36 and 37. If the credibility factors in Clause 36 are not removed, it is likely to increase the number of negative conclusive grounds decisions, with Clause 37 then removing support and protection from those individuals immediately.

6.33 The NIHRC notes that Clause 37 makes no distinction for children. The Anti-Trafficking Convention contains specific safeguards for child victims.[114] In addition, Article 13(1) and 14(1) of the EU Human Trafficking Directive (2011) require that the best interests of a child victim be a primary consideration, and that support for physical and psycho-social recovery measures be in place.[115] Clause 37 does not specifically address how these obligations will be protected where a recovery period may end following a negative conclusive grounds decision which is in dispute.

6.34 The NIHRC recommends the removal of Clause 37 from the Bill. If the clause is retained, the NIHRC recommends that it is amended to ensure that:

a. every potential victim receives the minimum 30-day recovery and reflection period required by Article 13 of the Anti-Trafficking Convention, regardless of when a conclusive grounds decision is made;

b. where a negative conclusive grounds decision is made, the protections and support provided during the recovery period continue until any request for reconsideration has been determined, and the individual is not removed while that request is

[113] *VCL and AN v UK*, Application No 77587/12 and 74603/12, judgment of 16 February 2021, at para 152.
[114] Article 10 and Article 14, CoE Convention on Action against Trafficking in Human Beings 2005.
[115] Directive 2011/36/EU 'EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011.

outstanding;

c. a minimum period of support following a negative conclusive grounds decision is set out in primary legislation; and

d. Clause 37 does not apply to children.

Clause 38: Disqualification from protection

6.35 Section 63 of the Nationality and Borders Act 2022 introduced a discretionary power to disqualify potential victims of trafficking or modern slavery from the protections of the National Referral Mechanism, including the recovery and reflection period, on public order or bad faith grounds. Section 29 of the Illegal Migration Act 2023 would, if commenced, make disqualification on public order grounds mandatory unless there are "compelling circumstances" to the contrary.

6.36 Clause 38 of the Bill seeks to amend section 63 of the Nationality and Borders Act 2022 and separate the public order and bad faith grounds for disqualification into two separate provisions. Both forms of disqualification would become a mandatory duty rather than a discretionary power.[116] Clause 38 also extends the public order ground to include individuals deemed to pose a threat to national security. The exception to disqualification would apply only where the individual is at "immediate and significant risk" of becoming a victim of slavery or human trafficking in the UK. Significantly, where a disqualification is applied, no conclusive grounds decision is to be made.[117] Children are exempt only where they have a right of abode or leave to remain in the UK, other than leave granted as a victim of trafficking or modern slavery.

6.37 The NIHRC has advised on section 29 of the 2023 Act and its potential conflict with Article 4 of the ECHR.[118] The Council of

[116] Home Office, 'Immigration and Asylum Bill Explanatory Notes' (Home Office, 2026), at para 297.
[117] Clause 38(2)(c).
[118] Northern Ireland Human Rights Commission, 'Submission to House of Lords on the Illegal Migration Bill' (NIHRC, 2023), at para 6.2-6.3: "The right to not be held in slavery and servitude, as provided for by Article 4(1) of the ECHR, is absolute and cannot be interfered with under any circumstances. Consequently, States have a positive obligation to ensure that domestic legislative and administrative frameworks protect individuals from trafficking and facilitate the identification of victims. States are also required to take appropriate measures to remove victims of slavery and servitude, such as victims of human trafficking, from harm and to

Europe monitoring mechanism for the Anti-Trafficking Convention, the Group of Experts on Action against Trafficking in Human Beings (GRETA), has stated that the automatic disqualification of potential victims of trafficking on public order grounds under the 2023 Act runs contrary to Article 13.[119] The GRETA advise that:

> The grounds of public order should always be interpreted on a case-by-case basis, and it is not possible to automatically disqualify a victim from access to the recovery and reflection period on the basis that the person has violated migration laws. The grounds of public order are intended to apply in very exceptional circumstances and cannot be used by States Parties to circumvent their obligation to provide access to the recovery and reflection period.[120]

6.38 As above, Article 4 of the ECHR imposes an operational duty to protect an individual where the State knew, or ought to have known, of a credible suspicion that the individual had been, or was at real and immediate risk of being, trafficked.[121] The NIHRC is concerned that the exception in Clause 38 is significantly narrower than this duty. It applies only where there is an "immediate and significant" risk of the individual becoming a victim in the UK. The NIHRC further considers that the absolute nature of ECHR Article 4 means that the State's operational duty cannot be displaced by a mandatory disqualification, even where public order or national security concerns arise. Any legitimate public order or national security concern should be managed through other means, rather than by withdrawing protection from a potential victim.

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provide the appropriate support. In some cases, victims of forced labour and servitude may be subject to threats to life or experience torture or ill-treatment. Articles 2 (right to life) and 3 (freedom from torture) of the ECHR require public authorities to take proactive, reasonable steps when there is a real and imminent risk to life/of torture or ill treatment. In cases where there is a threat to an individual's physical or moral integrity, Article 8 of the ECHR (right to respect for private life) may also be engaged. This provision requires that any interference with a person's physical or moral integrity is necessary and proportionate in pursuit of a legitimate aim."

[119] UK Parliament Hansard, 'House of Commons and House of Lords Joint Committee on Human Rights: Legislative Scrutiny: Illegal Migration Bill - GRETA (CoE Group of Experts on Action against Trafficking in Human Beings) – IMB0024', 21 April 2023. Available at: committees.parliament.uk/written evidence/119915/pdf/.

[120] UK Parliament Hansard, 'House of Commons and House of Lords Joint Committee on Human Rights: Legislative Scrutiny: Illegal Migration Bill - GRETA (CoE Group of Experts on Action against Trafficking in Human Beings) – IMB0024', 21 April 2023.. Available at: committees.parliament.uk/written evidence/119915/pdf/.

[121] *VCL and AN v UK*, Application No 77587/12 and 74603/12, judgment of 16 February 2021, at para 152.

6.39 The NIHRC is particularly concerned that no conclusive grounds decision is to be made where an individual is disqualified under Clause 38. In *VCL and AN v UK*, the ECtHR held that once the authorities are aware of a credible suspicion that an individual has been trafficked, that individual should be assessed by a qualified person, and any decision to prosecute should follow that assessment.[122] The ECtHR has also held that the identification of a potential victim triggers the State's procedural obligation to investigate.[123] If no conclusive grounds decision is made, the State cannot establish whether the individual is a victim, whether any offence relied upon was committed as a direct result of their exploitation, or whether a trafficking offence should be investigated.

6.40 The NIHRC is further concerned that this may reverse the obligation on States to identify victims of human trafficking under Article 9 of the Directive.[124] It also sits uneasily alongside the requirement under Article 11 to provide assistance and support "as soon as the competent authorities have a reasonable-grounds indication" that an individual has been trafficked.[125]

6.41 The NIHRC reminds that the proposed public order disqualification could be based on convictions for offences committed in the course of exploitation. Article 26 of the Anti-Trafficking Convention requires the State to provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent they were compelled to do so. Further, Article 8 of the EU Human Trafficking Directive (2011) requires that authorities are entitled not to prosecute victims of human trafficking for crimes they were compelled to commit as a consequence of being trafficked.[126]

6.42 The NIHRC recommends the removal of Clause 38 from the Bill, and that section 29 of the Illegal Migration Act 2023 is repealed, to ensure that disqualification from protection remains a discretionary power applied on a case-by-case

[122] Ibid, at para 60.
[123] *SM v Croatia*, Application No 60561/14, 25 June 2020 (Grand Chamber), at para 322.
[124] Article 9, Directive 2011/36/EU 'EU Council Directive on preventing and combating trafficking in human beings and protecting its victims', 5 April 2011.
[125] Article 11, Directive 2011/36/EU 'EU Council Directive on preventing and combating trafficking in human beings and protecting its victims', 5 April 2011.
[126] Directive 2011/36/EU 'EU Council Directive on preventing and combating trafficking in human beings and protecting its victims', 5 April 2011.

basis and only in exceptional circumstances, in line with Article 4 ECHR, the Anti-Trafficking Convention and obligations under Windsor Framework Article 2.

Clause 39: Removal of duty to grant leave to remain to assist recovery

6.43 Clause 39 of the Bill repeals subsections (2)(a), (4)(a) and (5) of section 65 of the Nationality and Borders Act 2022. Currently, section 65 requires the Secretary of State to grant temporary limited leave to remain to confirmed victims of trafficking or modern slavery where this is necessary to assist their recovery from any physical or psychological harm arising from their exploitation. Clause 39 would remove this duty, while retaining the duty to grant leave where it is necessary for a victim to seek compensation or to cooperate with an investigation or prosecution.

6.44 Article 14(1) of the Anti-Trafficking Convention requires the State to issue a renewable residence permit to victims where their stay is necessary owing to their personal situation, or for the purpose of their cooperation with the competent authorities in an investigation or criminal proceedings, or both.[127] When the 2022 Act was introduced, the UK Government chose to provide for both situations. Clause 39 will remove leave based on a victim's personal situation. The NIHRC is concerned that Clause 39 makes a victim's access to leave solely dependent on their usefulness to criminal or civil proceedings, rather than their own recovery needs, and represents a regression in the protection currently afforded to victims in the UK.

6.45 The NIHRC is concerned that Clause 39 will increase the risk of re-trafficking. Without leave to remain, a confirmed victim may be unable to access employment, stable accommodation or longer-term support, which may leave them vulnerable to further exploitation. As outlined above, Article 4 ECHR requires the State to take appropriate measures to protect an individual where it knew, or ought to have known, of a real and immediate risk that they would be trafficked.[128] The domestic courts have confirmed that this

[127] Article 14(1), CoE Convention on Action against Trafficking in Human Beings.
[128] *VCL and AN v UK*, Application No 77587/12 and 74603/12, judgment of 16 February 2021, at para 152.

duty extends to protecting individuals from the risk of re-trafficking.[129]

6.46 Article 14(2) of the Anti-Trafficking Convention requires that residence permits for child victims are issued in accordance with the best interests of the child. Clause 39 makes no specific provision for children.

6.47 The NIHRC recommends the amendment of Clause 39 of the Bill to ensure that section 65 of the 2022 Act continues to provide for leave to remain in both situations set out in Article 14(1) of the Anti-Trafficking Convention. This includes where a victim's stay is necessary owing to their personal situation, in order to safeguard against the risk of re-trafficking.

6.48 The NIHRC recommends the amendment of Clause 39 of the Bill to ensure that decisions on leave to remain for child victims are made in accordance with the best interests of the child, in accordance with Article 14(2) of the Anti-Trafficking Convention.

7.0 Windsor Framework Article 2

7.1 As noted above, the NIHRC considers that several EU measures which bound the UK before Brexit and are relevant to the Immigration and Asylum Bill continue to set minimum standards in NI by virtue of Windsor Framework Article 2. Article 2(1) of the Windsor Framework states:

> The United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Framework,

[129] *R (TDT) v Secretary of State for the Home Department* [2018] EWCA Civ 1395, at paras 84 and 86.

and shall implement this paragraph through dedicated mechanisms.

7.2 Section 7A of the EU Withdrawal Act 2018, incorporated all rights, obligations and remedies arising under the UK-EU Withdrawal Agreement – which includes the Windsor Framework[130] – into UK law.

7.3 The UK Supreme Court has recently observed that Windsor Framework Article 2 may create enforceable rights, "in conjunction with … EU instruments falling within the ambit of the RSEO [Rights, Safeguards and Equality of Opportunity] chapter" of the Belfast (Good Friday) Agreement[131] subject to the obligation identified being "a clear and precise obligation in EU law by reference to the RSEO chapter," capable of satisfying the EU test for direct effect.[132]

7.4 The interpretation of the 'ambit' of the RSEO chapter is therefore central to identifying the rights protected by Windsor Framework Article 2 and therefore the range of EU law that continues to set minimum standards in NI. However, the UKSC did not define the 'ambit' of the RSEO chapter.

7.5 Referring to paragraph 1 RSEO, the UKSC observed "The rights listed are all concerned with ending sectarian conflict".[133] The NIHRC suggests that this and observations in the related paragraphs are ambiguous and should be read as having been noted by the court in deciding upon a Troubles legacy-related case.

7.6 However, Secretary of State for NI advised Parliament that "The Supreme Court's judgment has … confirmed the Government's long-standing position that the rights protected by article 2 of the Windsor framework are those concerned with ending the sectarian conflict in Northern Ireland."[134]

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[130] Article 182, UK-EU Withdrawal Agreement.
[131] *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15 at para 125.
[132] *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15 at para 116.
[133] *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15 [2026] UKSC 15, at para 119. See also para 131.
[134] UK Parliament Hansard, 'House of Commons Oral Statement: Supreme Court *Dillon* Judgment – Secretary of State for NI, Hilary Benn MP', 14 May 2026.

7.7 NIHRC considers that interpreting the UKSC in *Dillon* as restricting rights in the RSEO chapter to persons affected or harms arising from the conflict stretches the judgment and is incompatible with the clear, future-facing, and peace-building language of the Belfast (Good Friday) Agreement. For example, paragraph 1 RSEO includes the commitment to the civil rights and religious liberties of "everyone in the community"[135] and the Declaration of Support promises a "new beginning" based on the "vindication of the human rights of all." NIHRC observes that equality protections on grounds of gender or disability contained in the RSEO chapter for example cannot be interpreted as restricted to a Troubles-related context.

7.8 Moreover, such an interpretation would be inconsistent with the principle of universality of rights and the living instrument doctrine. Neither is such an interpretation tenable given the text of Windsor Framework Article 2, including the reference to EU equality directives. A conflict-related restriction on their application would be contrary to the requirements of the UK-EU Withdrawal Agreement.[136]

7.9 Windsor Framework Article 2 was negotiated decades after the Belfast (Good Friday) Agreement. It refers to EU legislation that post-dates it by many years. There is no suggestion of a selective application of rights in the Windsor Framework nor in the UK Government's contemporaneous, but recently withdrawn, Explainer Document on Article 2.[137] A clear purpose of the Windsor Framework was to protect the 1998 Agreement in all its dimensions[138] and the Preamble recognises the role of EU law in providing a "supporting framework" for the human rights commitments in the RSEO chapter – since 1998.

7.10 The RSEO chapter of the 1998 Agreement includes a commitment to incorporate the ECHR into domestic law.[139] Caselaw to date has

[135] Belfast (Good Friday) Agreement, 10 April 1998, Part 6 on Rights, Safeguards and Equality of Opportunity, paragraph 1.
[136] Article 4, UK-EU Withdrawal Agreement.
[137] NI Office, 'UK Government Commitment to "No Diminution of Rights, Safeguards and Equality of Opportunity" in Northern Ireland: What does it Mean and How will it be Implemented?' (NIO, 2020).
[138] Article 1.
[139] Paragraph 2.

accepted that ECHR rights fall within the ambit of the RSEO chapter,[140] but this was not considered by the UK Supreme Court in the *Dillon* case.[141] Subject to further consideration by the courts, the NIHRC remains of the view that, by virtue of Windsor Framework Article 2, EU law which was binding on the UK before Brexit, continues to set minimum standards in NI, to the extent that it underpinned or gave expression to ECHR rights.

7.11 To be clear, the NIHRC considers that the commitment to ECHR rights in the RSEO chapter helps to define the ambit of that chapter and in so doing helps to identify EU law falling within the scope of Windsor Framework Article 2. Windsor Framework Article 2 is exclusively concerned with EU minimum standards so there is no suggestion that ECHR rights, in themselves, are protected by the Windsor Framework.

7.12 The NIHRC contends that the rights of victims of human trafficking and the rights of asylum-seekers fall within the scope of the RSEO chapter of the Belfast (Good Friday) Agreement for several reasons. The treatment of victims of human trafficking engages civil rights and ECHR rights under Articles 3 (prohibition of torture), Article 4 (prohibition of slavery and forced labour) and Article 8 (right to respect for private and family life). Human trafficking is recognised as a form of "gender-based violence…understood to be a form of discrimination" thereby engaging gender equality rights within the RSEO.[142] The treatment of people applying for and granted asylum also engages civil rights and several ECHR rights including under Article 3 (Prohibition of torture), Article 5 (Rights to liberty and security) and Article 8 (Right to respect for private and family life).

7.13 In a judgment presently stayed before the Court of Appeal in NI, the High Court of NI considered the rights of asylum-seekers and victims of human trafficking. While the judgment must be read in light of the UK Supreme Court in *Dillon*, the following conclusions have not explicitly been overturned:

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[140] *Martina Dillon and Others v Secretary of State for NI* [2024] NICA 59, at paras 115 and 117 to 118
[141] *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, para 147 refers to ECHR rights in a separate section of the judgment considering the application of the EU Charter of Fundamental Rights and its connection with the ECHR.
[142] Recital 17, Directive 2012/29/EU, 'EU Parliament and Council Directive establishing minimum standards on the rights, support and protection of victims of crime' 25 October 2012.

- asylum-seekers and victims of human trafficking, *as individuals*, are protected by Windsor Framework Article 2 (a question not challenged by the UK Government);[143]
- *rights particular* to asylum-seekers and victims of human trafficking fall within the scope of the RSEO chapter;[144] and therefore,
- pursuant to Windsor Framework Article 2, the following measures of the EU asylum acquis that bound the UK before Brexit, continue to set minimum standards below which the law in NI must not fall:[145]
    - the EU Human Trafficking Directive (2011/36/EU);[146]
    - the EU Asylum Reception Directive (2003/9/EC);[147]
    - the EU Qualification Directive (2004/83/EC);[148] and
    - the EU Asylum Procedures Directive (2005/85/EC).[149]

7.14 The NIHRC notes that the EU measures in question deal with asylum and human trafficking rather than wider questions of immigration policy. It is on the basis of the above analysis that the NIHRC is considering compliance of the Immigration and Asylum Bill 2026 with Windsor Framework Article 2 in this submission.

[143] *In the Matter of the NI Human Rights Commission and JR295* [2024] NIKB 35, at paras 68-69.
[144] Ibid at para 70.
[145] *In the Matter of the NI Human Rights Commission and JR295* [2024] NIKB 35, at paras 74-173.
[146] Directive 2011/36/EU, 'EU Council Directive on preventing and combating trafficking in human beings and protecting its victims', 5 April 2011
[147] Directive 2003/9/EC, 'EU Council Directive laying down minimum standards for the reception of asylum seekers', 27 January 2003.
[148] Directive 2004/83/EC 'EU Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted', 29 April 2004.
[149] Directive 2005/85/EC, 'EU Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status', 1 December 2005.

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