Amnesty International UK

BRIEFING

4 September 2025

REFUGEE AND MIGRANT RIGHTS

Immigration and Asylum Appeals

The immigration and asylum appeals system has been changed several times. The Home Secretary has announced it is to be changed again. This briefing provides information about that system and the Home Secretary's announcement.

Introduction

On 2 September 2025, the Home Secretary informed the House of Commons that:[i]

> "*…we will introduce a new independent body to deal with immigration and asylum appeals fully independent of government, staffed by professionally trained adjudicators, with safeguards to ensure high standards but able to surge capacity as needed and accelerate and prioritise cases, alongside new procedures to tackle repeat applications and unnecessary delays.*"

As addressed in this briefing, this announcement contains some potential to mislead and for inconsistency. It may be that the Home Secretary will provide further clarification at a later point, but what she has said raises **some immediate concerns** regarding:

- what she says about the independence of her proposed new body for receiving and deciding appeals against immigration and asylum decisions made by the Home Office; and
- what may be implied from her statement about the independence, professionalism and standards of the body that currently receives and decides these appeals.

The current appeals body

Not all immigration decisions made by the Home Office can be appealed. Many Home Office decisions relating to the rights of EEA and Swiss nationals and their family members under the agreement by which the UK left the EU are appealable.[ii] Otherwise, the only immigration decisions that can be appealed are refusals of asylum and refusals of human rights applications.[iii]

Appeals are made to and decided by judges of the immigration and asylum chambers of the First-tier Tribunal and Upper Tribunal.[iv] Generally, an appeal against a Home Office decision will go to the First-tier Tribunal. A decision of that tribunal may, if it is arguable that the tribunal made an error of law, be appealed to the Upper Tribunal.[v]

The First-tier Tribunal and Upper Tribunal are each independent of government in that:

- the **independence of the judges** of these tribunals is formally guaranteed in law and ministers are legally required to uphold that independence;[vi]

- the **administration of these tribunals** is a joint responsibility between the judiciary and HM Courts and Tribunals Service (HMCTS) – HMCTS has its own chief executive who reports to a board, which in turn reports to the Lord Chancellor and the Lord Chief Justice;[vii]
- the committee that makes the rules governing the **tribunal's appeal procedures** is independent of government, albeit the Lord Chancellor appoints a minority of its members;[viii] and
- the **Lord Chancellor's legal duties** require her to defend judicial independence and ensure the public interest in maintaining an independent and effective judicial system is properly considered in all decisions affecting that system.[ix]

The Home Secretary's announcement

The Home Secretary's announcement indicates that a new appeals body is to be introduced. She says it will be independent of government. However, she does not say how. She does not say whether it will be any more independent than the existing appeals body (the First-tier Tribunal and Upper Tribunal), still less how. Indeed, she does not say whether it may be less independent.

The Home Secretary says the new body will consist of professionally trained adjudicators. However, she does not say what she means by this. She does not say whether adjudicators will be more or less professionally qualified and trained than judges of the current tribunals.[x] She does not say whether they will simply be the same people but with a change to their title (i.e., from judge to adjudicator).

The Home Secretary also says there will be safeguards to ensure high standards, capacity to deal with sudden or unexpected increases in appeals, and procedures to deal with repeat applications and delays. Again, she does not explain this. She does not say if these safeguards, capacities or procedures will be any different to those currently, and if so how.[xi]

There are at least three profound problems with what the Home Secretary has so far said:

1. The Home Secretary makes claims about the independence, standards, professionalism, capacities and procedures of the proposed new appeals body. Making these claims without further explanation gives, or could give, the **appearance of criticising the existing appeals body** for a lack of independence, standards or professionalism, or regarding its capacity and procedures. This is to undermine that body without substantiating any such criticism.[xii]

2. By making claims about safeguards, capacities and procedures of the proposed new appeals body, the Home Secretary **undermines her own assurance that it will be independent** from government. She can only guarantee this body's capacity and procedures if she is responsible for these things. However, if she is responsible for these things, the new body will clearly not be independent of government.

3. The timing and content of the Home Secretary's announcement seems to reflect her own dissatisfaction at the number of appeals (against decisions she is responsible for) now waiting to be decided, and her desire to present herself as getting a grip on the asylum system.[xiii] This also undermines assurances about independence of the appeals body. Moreover, the Home Secretary is significantly **responsible for the number of appeals**. She has chosen to apply flawed rules introduced but not implemented by the previous government, wrongly refusing asylum to many people who then need to appeal.[xiv]

Previous changes to the appeals system

The appeals system has undergone several changes introduced by previous governments over many years. Of particular significance are the following:

- In May 1969, Parliament created a two-tier system to deal with appeals against various Home Office decisions.[xv] Appeals were generally made to and decided by people called adjudicators. If permission was granted, an adjudicator's decision could be appealed, including by the Home Office, to the Immigration Appeal Tribunal. This two-tier appeals system was later formally constituted as the **Immigration Appellate Authority (IAA)**.[xvi] The rules governing appeals procedures were made by the Home Secretary, a power which was later transferred to the Lord Chancellor.[xvii]

- On 4 April 2005, the IAA was replaced by the **Asylum and Immigration Tribunal (AIT)**.[xviii] The change involved changing the title of the people who decided appeals from adjudicators to judges. The change gave the appearance of merging a two-tier system into one. However, the system remained two-tier. If permission was granted, a more senior judge could review a decision of the first tier of that system. This process was called reconsideration rather than appeal but was essentially the same.

- On 15 February 2010, the AIT was abolished, and its functions passed to the current appeals body. [xix] The change involved moving the judges from the AIT to the current body. The second tier of this body (**the Upper Tribunal**) has a higher status making it more difficult to seek judicial review of its decision to refuse permission to appeal against a decision of the first tier (**the First-tier Tribunal**).[xx] This appeals body also has more independence from government, including over the rules that govern the appeals for which it is responsible.[xxi]

The basic structure of the appeals body has remained the same throughout all these changes. The people deciding appeals have generally stayed the same, though their official titles have changed. The appeals body has, however, acquired significantly greater independence over this time.

There have been many other changes affecting appeals. Many of these have been far more significant than changing the name of the appeals body or the name of its decision-makers. Appeal rights have been significantly reduced. Generally, **appeals are now only available on asylum or human rights grounds**; and the appeals body can only decide appeals on these grounds.[xxii] Governments have also introduced **legislation that seeks to restrict the evidence a judge may consider or the findings of fact that a judge may make** on the evidence.[xxiii] Governments have also introduced **legislation to require judges to apply flawed and narrow interpretations of law** – including the law setting out what makes someone a refugee and entitled to asylum;[xxiv] and the law that protects the right to respect for private and family life.[xxv] Much of this has undermined the appeals system.[xxvi] It has reduced the chances that people's right and need to stay in the UK, including for reasons of their safety, is properly recognised. It has prompted more litigation and less overall confidence in the appeals system.[xxvii] It has left many people refused permission to stay in circumstances where it is unreasonable to expect them to leave.[xxviii] It has generally made the immigration and asylum systems far **less fair**, far **less efficient**, and far **more costly**. It has also clearly not satisfied any of the political motivations behind these changes.

Conclusion

It is convenient for governments to blame the appeals system rather than take responsibility for their own failings in running the immigration and asylum systems. This again seems to be the motivation for announcing a new appeals body – which will cost time and money changing laws, rules, and stationery whether doing so brings any improvement, makes things worse, or changes nothing of substance.[xxix]

The Home Secretary should instead focus on her own responsibilities. An urgent place to start would be making the asylum system fair and efficient and repealing legislation that prevents that.[xxx]

Notes

[i] *Hansard* HC, 1 September 2025 : Col 25
[ii] Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020, SI 2020/61, Part 2
[iii] Section 82, Nationality, Immigration and Asylum Act 2002. There are also appeals against some decisions to deprive a British citizen of that citizenship: see section 40A, British Nationality Act 1981.
[iv] These chambers are established under the First-tier Tribunal and Upper Tribunal (Chambers) Order 2010, SI 2010/2655.
[v] Tribunals, Courts and Enforcement Act 2007, section 11
[vi] Tribunals, Courts and Enforcement Act 2007, section 3
[vii] The Lord Chancellor has a general duty to ensure there is an efficient and effective system in place to support the judicial functions of tribunals and courts: section 39, Tribunals, Courts and Enforcement Act 2007. The body established to achieve this is HM Courts and Tribunals Service (HMCTS). Information about governance is available on the HMCTS website.
[viii] Tribunals, Courts and Enforcement Act 2007, section 22 & Schedule 5
[ix] Tribunals, Courts and Enforcement Act 2007, section 3 (also the Lord Chancellor's preexisting constitutional role as preserved by section 1(b) of the Act)
[x] e.g., Tribunals, Courts and Enforcement Act 2007, provisions in Schedules 2, 3 & 4
[xi] These include various provisions of the Tribunals, Courts and Enforcement Act 2007, various functions and powers established by that Act, and the procedure rules made under section 22 of that Act.
[xii] This concern is exacerbated by the current political and public discourse concerning the immigration and asylum systems including decisions on appeals, as e.g., discussed in Amnesty's June 2025 briefing on Article 8: Private and Family Life.
[xiii] In making her announcement, the Home Secretary claimed that the appeals system was the "*biggest obstacle*" to reducing the asylum backlog: *Hansard* HC, 1 September 2025 : Col 24. However, as explained in this briefing, it is the Home Secretary's own policy decisions that are the obstacle, not the appeals system.
[xiv] This is critical to how the government is not, despite what it says, properly addressing the backlog of people stuck in the asylum system that it inherited from the previous government. Amnesty wrote to the Home Office about this in June 2025. More information about backlogs is set out in Amnesty's April 2025 briefing on Home Office backlogs: lessons to be learnt.
[xv] Immigration Appeals Act 1969
[xvi] This was done with the passing of the Immigration Act 1971.
[xvii] Transfer of Functions (Immigration Appeals) Order 1987, SI 1987/465
[xviii] Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (Commencement No. 5 and Transitional Provisions) Order 2005, SI 2005/565 giving effect to section 26 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.
[xix] Transfer of Functions of the Asylum and Immigration Tribunal Order 2010, SI 2010/21
[xx] Tribunals, Courts and Enforcement Act 2007, section 11A
[xxi] Tribunals, Courts and Enforcement Act 2007, section 22
[xxii] This is explained in Amnesty's June 2025 briefing on Article 8: Private and Family Life.
[xxiii] A recent example of this is provided by the Nationality and Borders Act 2022, sections 22 & 26; an earlier example is provided by the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.
[xxiv] Nationality and Borders Act 2022, sections 30-38
[xxv] Immigration Act 2014, section 19
[xxvi] Although judges have retained their formal independence, their judicial functions to assess evidence and apply the law to the facts have been interfered with. The most extreme attempt to do this was done by the Safety of Rwanda (Asylum and Immigration) Act 2024, which the government is seeking to repeal by the Border Security, Asylum and Immigration Bill.
[xxvii] Deportation policy provides an example of this harmful cycle of reacting to political pressure by making promises that are not, or even cannot be fulfilled, alongside making changes that worsen existing problems or simply create new ones, as is discussed in Amnesty's June 2025 briefing on Deportation (and Article 8).
[xxviii] Amnesty's June 2025 letter to the Home Office and April 2025 briefing on Home Office backlogs: lessons to be learnt.
[xxix] This motivation appears confirmed by what the Home Secretary said immediately before announcing there would be a new appeals body (*Hansard* HC, 1 September 2025) and by the absence of any suggestion of such a change in the Immigration White Paper, *Restoring Control over the Immigration System*, CP 1326, published in May 2025.
[xxx] The government has thus far chosen to keep asylum provisions in the Nationality and Borders Act 2022, which it had rightly opposed when in opposition. It could and should repeal these in passing its Border Security, Asylum and Immigration Bill, as Amnesty has consistently urged it to do. Amnesty briefings on that bill are made available here.

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