

BRIEFING

24 June 2025

REFUGEE AND MIGRANT RIGHTS

Article 8: Private and Family Life

Article 8 of the 1950 European Convention on Human Rights requires that everyone's private and family life is properly respected. This briefing explains how Article 8 applies in immigration cases, addresses unfair and harmful political and media criticism of this, and indicates what is needed to avoid or reduce that criticism in future.

The purpose and effect of Article 8

The purpose of Article 8 is to protect everyone's private and family life.ⁱ It requires that respect is shown for such things as our **family relationships, social engagement, personal and sexual identity, home and correspondence**.

Respecting our private and family life does not mean that we should be guaranteed no interference with these things. It means that any interference must be in accordance with the law. It must also be **for a legitimate purpose, necessary** to achieve that purpose, and **proportionate** to any harm, hindrance or disturbance it causes to our private or family life.ⁱⁱ

Article 8 and the immigration system

Under the immigration system, someone who is not a British citizen must have permission to come or stay in the UK.ⁱⁱⁱ If someone does not have permission, they may be **removed** from the country and they may be detained for that purpose.^{iv} If they do have permission, it may be taken away if they breach a condition imposed on it (such as a condition that they must not work).^v Someone may be **deported** if their continued presence is not conducive to the public good – e.g., following their conviction for a criminal offence.^{vi} Deportation includes being removed from the country and barred from returning. If a decision is made to deport someone, any permission they may have will be cancelled.^{vii} For more on deportation see Amnesty's June 2025 briefing on [Deportation \(and Article 8\)](#).

All the above can have an impact on someone's private and family life. That will most often be the case for people who have partners or children living in the UK, including British partners and children; and for people who have lived in the UK for long periods of time. It can have an impact on other people's private and family life too – e.g., their children, partner, or anyone for whom they provide care.

Article 8 **does not prevent all decisions, or actions to enforce decisions, that interfere with private and family life**. It will only do so if what is being done or attempted is either not in accordance with law, not for a legitimate purpose, unnecessary to achieve any legitimate purpose, or disproportionately harmful to the person's private or family life compared to the purpose to be achieved.

Political and media criticism of Article 8

This criticism is generally of two types:

- Some criticism is simply an objection to there being any application of the European Convention on Human Rights (“the European Convention”) in the UK.
- Other criticism claims that Article 8 is applied in ways that wrongly obstruct and prevent the Home Office from operating a fair and efficient immigration system, including by removing people from the UK if they have no good claim to come or stay here.

Although these types of criticism are different, much political and media criticism does not clearly distinguish between the two. Some critics may claim that Article 8 is applied wrongly and say this gives reason why the European Convention should not apply in the UK. Others may simply object to the European Convention and so, for them, any application of any part of it will be wrong. It is useful, nonetheless, to consider these two types of criticism separately. Since this briefing is about Article 8 and immigration, it addresses the second type only.

Claims that Article 8 is wrongly applied

Criticism of Article 8 and how it is applied in immigration cases is not new. For many years, it has been a significant feature of how immigration policy is discussed and presented by politicians and media commentators.^{viii} This has often related to cases in which it is said someone should have been deported from the UK but has not because of a decision based on Article 8 – i.e., that the person’s deportation would interfere with their private and family life in an unlawful, unnecessary or disproportionate way.

Much of this criticism has no merit and is based on cases that are misrepresented. There are many examples. These tend to fall into one of two categories:

- Sometimes **an irrelevant fact is picked out and falsely presented as if it is the reason for a decision** made on Article 8 grounds. This is often done by focusing on an irrelevant fact that presented in this false way makes the decision look not merely wrong, but completely irrational.^{ix}
- Sometimes **some relevant facts are identified but others are left out that are also or even more important to the reasons for a decision** made on Article 8 grounds. This can also make the decision look both wrong and irrational because the facts left out are often ones that fundamentally change the nature of the case, and the decision made on it.^x

This false criticism has several harmful effects. It **undermines confidence** in the immigration system, in human rights law, and in the legal system more generally. It **increases hostility and suspicion** against immigration, migrant people and anyone treated as if a migrant person; and against anyone who stands up for migrant people’s rights or is regarded as doing so.

The response of Government

Government can respond in broadly one of three ways:

- It can **adopt the false criticism** and misrepresentation of cases and explicitly use this to support its policy. Perhaps the clearest example of this was in 2011 when a Home Secretary used a false story to attack Article 8, in preparation for her introduction of policy and legislation that was intended to restrict how judges could consider it.^{xi}
- It can fail to **correct false criticism** and misrepresentation, willingly or reluctantly allowing this to shape its policy – or at least giving the appearance that its policy is shaped by what is false. An example of this is provided by the current Home Secretary, who has responded to false criticism of Article 8 by first announcing she would review it and then presenting proposals that are intended to restrict its application.^{xii}
- It can **take a stand against false criticism** and misrepresentation, ensuring this does not influence its policy. Governments – whatever their political colour – often seem unwilling to do so. A stark

exception was given by the Lord Chancellor and Justice Secretary in response to the Home Secretary in 2011, but that response did not appear to have any effect on the policy and legislation the latter then introduced.^{xiii}

Making policy and introducing legislation in response to false criticism of Article 8 and how it is applied, rather than correcting that criticism, has simply **enabled more of this criticism**. It has given that criticism credence. It has encouraged those motivated to make that criticism to attract more attention to themselves or more support for their political views to keep doing so.

Ironically, the **policy and legislation of successive governments has gone even further in creating the conditions in which this criticism flourishes**. Some examples of this are as follows:^{xiv}

- In 2006, the Labour government changed immigration rules to remove the longstanding approach to what was to be considered in deciding whether to deport someone.^{xv} It got rid of the considerations that had applied long before the Human Rights Act 1998 was introduced in October 2000. It replaced these considerations with a human rights focus, heavily dependent on Article 8 in many cases. It then introduced legislation that made Article 8 the only focus in many cases.^{xvi} Previously decision-makers had been required to consider various factors set out in the UK's own immigration rules. Now, they were required to give far greater focus to Article 8.
- In 2014, the Conservative government took this even further. It introduced legislation that removed appeal rights against immigration decisions unless the individual had made a human rights or asylum claim, and then limited appeals to consideration of human rights and refugee law.^{xvii} In non-asylum cases, including many deportation cases, the sole issue for consideration was made to be Article 8.

Government has, therefore, **forced people and their lawyers to make more claims focused on Article 8**; and **forced decision-makers, including judges, to make more decisions based on Article 8**. For those who are simply against the European Convention or those who exploit hostility to it, this is a gift. It provides more opportunity for them.

What is needed from Government

Government should aim to promote public confidence in the immigration system and respect for human rights and the legal system. It should aim to reduce hostility and suspicion towards people. It can do these things by **setting and implementing immigration rules and policy that are clear and fair, which pay proper regard to the true circumstances of the people affected** by it. Not doing these things is bad for individuals, bad for government and bad for society more generally.^{xviii}

More specific proposals relating to deportation are set out in Amnesty's June 2025 briefing on [Deportation \(and Article 8\)](#).

Conclusion

Not only government, but others ought to take heed of the warnings set out in this briefing. False criticism and misrepresentations are dangerous. They undermine public confidence, human rights-respect and the legal system; and they increase hostility and suspicion. The more they are permitted to do so, the harder the task of undoing the damage caused.

We all have a role to play in resisting false criticism. A good place to start is remembering that if something said about a decision of a court or tribunal sounds irrational, it is at the very least likely that what is said is false.^{xix}

Notes

ⁱ Article 8 states:

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

ⁱⁱ If the harm done by interfering with private and family life is too great compared to the purpose of any interference, it will be disproportionate and so unnecessary. A simple example would be insisting on returning someone to the country from which they were brought as a baby simply because their life in the UK has been without permission ordinarily required by the rules even though they had and could have had no understanding of this and had always known the UK to be their home.

ⁱⁱⁱ Section 1(2), Immigration Act 1971

^{iv} Relevant provisions include paragraphs 8-10 and 16 of Schedule 2, Immigration Act 1971; section 10, Immigration and Asylum Act 1999; and section 62, Nationality, Immigration and Asylum Act 2002.

^v Paragraph 9.8.8 of the Immigration Rules

^{vi} Section 3(5), Immigration Act 1971

^{vii} Section 5(1), Immigration Act 1971

^{viii} A cursory review of recent reporting in some mainstream newspapers reveals this continues.

^{ix} An example would be to claim an Article 8 decision to bar someone's deportation following a conviction for assault was made because of someone's fashion tastes when the real reasons were they had grown up in the UK from early childhood, were completely integrated here, and knew very little of where it was proposed to deport them. Their fashion tastes may have been mentioned, for example as part of the background as to how they came to be involved in a fight with someone, also convicted and perhaps sentenced more heavily, which had been triggered by that other person objecting to how they dressed.

^x An example would be to claim the decision in the previous example was because the person, convicted of assault, spoke English well and felt more at home in this country without identifying that the person was brought here in early childhood, knew little of the country from which they were brought and was clearly far more integrated and a part of this country than the bare fact of speaking English well and feeling at home here.

^{xi} *The case of the cat deportation tale*, BBC News, 6 October 2011. The original false story can be traced back to a report in *The Telegraph* and *The Daily Mail* in October 2009.

^{xii} The Government's [Immigration White Paper CP 1326](#), May 2025 includes a proposal for further legislation to provide clarity in rules and decision-making concerning Article 8 (paragraph 156).

^{xiii} *Immigration cat story: Ken Clarke 'regrets' jibe at May*, BBC News, 6 October 2011. It is noteworthy how the headline focuses on the then Lord Chancellor's regret at what he describes as his own 'colourful language', suggesting that to be the real story rather than his continued correction of what had been said by the then Home Secretary about a judicial decision.

^{xiv} Further information is provided in Amnesty's June 2025 briefing on [Deportation \(and Article 8\)](#).

^{xv} [Statement of Changes in Immigration Rules \(HC 1337\)](#), July 2006

^{xvi} UK Borders Act 2007 provisions on 'automatic deportation', sections 32ff

^{xvii} Section 15, Immigration Act 2014 which amended Part 5, Nationality, Immigration and Asylum Act 2002.

^{xviii} One of the most serious consequences of so much false criticism of judicial decision-making has been to promote an attitude among many members of the public and some politicians that failures of policy and poor administration can instead be blamed on law, lawyers or courts. Amnesty's June 2025 briefing on [Deportation \(and Article 8\)](#) provides further example. However, there are many ways in which this is damaging. It generally undermines confidence in the legal system. Ironically, given the way they have too frequently responded to this criticism, that is to undermine Government and Parliament's primary role in making law (in pursuit of policy agendas) since the effect of laws must ultimately depend on that system.

^{xix} Nothing that is said here suggests that judges (or indeed other decision-makers) cannot make wrong decisions. Of course, that works both ways in that, in immigration cases, the 'victim' of any wrong decision may be Home Office, or it may be the individual against whom the Home Office has decided to act. There are various safeguards including that judicial decisions are generally subject to the supervision of more senior judges via appeal processes. However, attempts to pre-empt judicial decisions by legislation to restrict what can be considered and how increase the prospect of wrong decisions and undermine the integrity of the legal system by interfering with judicial competence and independence even without being capable of knowing what will turn out to be relevant in any particular case.

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