

The Immigration and Asylum Bill and the Rewriting of Family Life Under Article 8

Introduction

The Immigration and Asylum Bill represents another attempt by the UK government to impose tighter controls on migration and residence rights, this time based on a policy position statement from May 2025. In this instance, the government's attempts go well beyond administrative controls regarding, for example, who can successfully apply for a visa – and instead aim to redefine what counts as 'family life' for the purposes of Article 8 of the European Convention on Human Rights (ECHR), an international treaty.

The government has maintained these provisions about Article 8 in the Bill even though the UK cannot use domestic law to change what the ECHR means. The rights established in Article 8 are set out in the treaty, and ultimately, it is the European Court of Human Rights (ECtHR) that has the highest authority to interpret what those rights mean.

In our analysis, the Bill is more restrictive than the ECtHR's case-law, meaning that the government is attempting to impose limits on 'family life' that may well be illegal and that could lead to challenges before the European Court.

This briefing sets out the relevant provisions of the Bill and makes recommendations for Parliament's consideration.

The attempt to redefine 'family life'

Article 8 of the ECHR provides that everyone has the right to respect for their 'private and family life'. A government may only take measures that interfere with this right if those measures are established in law and necessary, in a democratic society, to pursuing a legitimate aim. In practice, the ECtHR has sometimes found that this Article 8 right means states that are parties to the ECHR cannot remove or deport people, because those people have established a 'family life' in the state where they are living. Clause 18 of the new Bill would insert a new section 117AA into Part 5A of the Nationality, Immigration and Asylum Act 2002 (NIAA). This new section would attempt to limit a person's 'family life', for Article 8 purposes, to what the government is calling their 'core cohabiting family': namely, the person's spouse, civil partner or partner, or children, or the person's parents if the person is under 18. The person must usually live with their family member for that individual to be

considered part of their ‘core cohabiting family’ for the purposes of Article 8 under the proposed new law. Adult relationships beyond this ‘core’ household group – such as the parents of an adult, grandparents, siblings, cousins and aunts or uncles – would fall outside this new UK definition of ‘family life’, unless the person concerned could show an ‘additional element of dependency’. There is also no mention of stepchildren or foster children, in the Bill itself or its explanatory notes.

In a potentially confusing approach, Section 117AA(5) then lists four factors which, taken independently, would *not* constitute sufficient dependency between adults who are not spouses, civil partners or partners. This means the government is creating a list of elements that, by themselves, would *not* create an Article 8 right that the UK courts could enforce. These are:

- Financial dependency;
- Physical or mental illness, unless the person in question is so incapacitated as to need ‘constant’ care and support;
- Emotional support needs;
- Concerns that the person’s welfare is in jeopardy due to ‘war, conflict or instability’.

Legality of this approach and the UK’s domestic provisions on ‘dependency’

It appears to us that the UK’s attempt to narrow Article 8 of the ECHR by using its own laws is illegal. As a state that has signed, ratified and incorporated the ECHR, the UK is obligated to respect the Convention in the Convention’s terms. It cannot unilaterally determine or narrow the meaning of Article 8.

Moreover, in our analysis, the new section 117AA of the Bill departs from the jurisprudence of the ECtHR, which is the body that *is* empowered to say with finality what the limits of the protections found in Article 8 are. First, in some cases, the ECtHR has found an Article 8 right to family life among family members who would not count as ‘core cohabiting family’ under the proposed UK law. While the UK law includes a qualifier to the effect that the listed types of family relationship are the ones that will ‘normally’ constitute ‘core cohabiting family’ for legal purposes, thus leaving the courts and tribunals at least a small amount of flexibility, it creates a presumption that many relationships will *not* qualify – which the ECtHR has not done, and which its case-law suggests is the wrong approach.

Second, the ECtHR has repeatedly insisted that the analysis of whether dependency exists must take place on a case-by-case basis – the facts of every individual case will matter. Even if the Court, in its cases, has usually pointed to multiple reasons to conclude that dependency exists for the purposes of Article 8 family life, to our awareness it has never said that claimants must have multiple reasons for their dependency or that (for example) the person must be completely incapacitated, or that emotional dependence alone will not suffice. The Court says a fact-specific, individualised analysis will be necessary in every case.

The recent case of *Martinez Alvarado v. the Netherlands*¹ shows precisely why a fixed statutory formula about ‘core cohabiting family’ cannot take the place of the individualised judgment Article 8 demands. In *Martinez Alvarado*, the applicant, an intellectually disabled Peruvian national who was an adult, had lived with his four adult sisters in the Netherlands since 2015, following the death of their parents. In 2017, the Dutch state refused Alvarado a residence permit on the basis that his relationship with his sisters did not amount to ‘family life’ for the purposes of Article 8.

The ECtHR noted that it has held that ‘family life’ for the purposes of Article 8 is ‘normally limited to the core family’. However, the Court offered a reminder that whether ‘family life’ exists is ‘essentially a question of fact depending upon the existence of close personal ties’. For adult parents and siblings, some form of dependency that goes beyond the usual emotional connection is required. The Court emphasised that whether such dependency exists is something that the courts at state level need to analyse on a case-by-case basis, and observed that dependency may arise from health, financial and/or material circumstances. The Court concluded that applicant had convincingly demonstrated his reliance on his sisters’ care, such that the Netherlands had violated Article 8 by failing to recognise his right to remain in the country.

This case supports the view that a fixed test regarding who qualifies as ‘core ... family’ is not sufficient to capture how Article 8 operates and how broad it can be, because family relationships and dependency will vary across individual lives. Many different relationships, such as those between adult siblings, may give rise to Article 8 ‘family life’ -- while dependency might arise from physical illness, cognitive or intellectual disability, financial insecurity, or a variety of other factors.

*Nasri v. France (Application no. 19465/92)*¹ supports the same conclusions. The applicant, an adult Algerian national, was deaf and mute and had a severe intellectual disability, but was not completely incapacitated and had a social life outside the home; he had lived almost all his life in France with his parents and siblings. Following a series of criminal convictions, including for rape, he faced a deportation order from the French authorities. The ECtHR took the view that although Nasri was an adult, his relationship with his parents (and, the Court seemed to suggest, his siblings) remained essential. The Court found that Nasri’s deportation would breach Article 8 – especially in light of his weak ties to his country of origin, Algeria, and likely inability to function there.

¹ [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-57934%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57934%22]})

Like *Martinez Alvarado*, *Nasri* shows that an individualised assessment of each person's actual circumstances is essential, and that fixed categories or thresholds in the law create barriers that could result in Convention violations. The Court did not ask whether these applicants met a predetermined definition of dependency, or whether their family relationships fell within some narrow, predefined range. It asked what their relationships with their families actually meant – for example, for their wellbeing and ‘psychological and social equilibrium’ -- and reached its conclusions on that basis.

New section 117AA of the Bill also frames Article 8 protection primarily in terms of *family* relationships. In our analysis, this framing does not reflect the full potential scope of Article 8, which protects family life and *private life* as two distinct grounds, each capable of succeeding on its own. A person who cannot establish family life may still succeed under the private life element of Article 8.

A case that supports this point is *A.A. v. the United Kingdom* (*Application no. 8000/08*²). The applicant, a Nigerian national, had come to the UK at the age of 13 to join his mother and had lived in the country for 11 years, and had not founded a family of his own; he received a deportation order after a conviction for a rape he committed at the age of 15. The ECtHR observed that an examination of its case law would tend to suggest that a young adult living with his mother, without a family of his own, could be regarded as having family life. It concluded, however, that it was not necessary to decide that question. Article 8, the Court explained, also protects the right to establish and develop relationships with other people and with the ‘outside world’, and ‘can sometimes embrace aspects of a person's social identity’. Established social ties between a settled migrant and the community in which they live may form part of ‘private life’ within the meaning of Article 8, the Court opined. For this reason, the Court said, the expulsion of a settled migrant interferes with private life regardless of whether family life is separately established. The Court noted that, in practice, the same factors for analysing whether a state's interference with Article 8 is necessary and proportionate will apply whichever part of the Article is engaged. In *A.A.*, it found that deporting the applicant to Nigeria would violate his Article 8 rights. In conclusion, a test that requires meeting a fixed threshold will be incapable of capturing the nuanced and complex realities the Convention might protect. Legislating a narrower UK-specific test only increases the likelihood that decisions taken under new section 117AA will be found to breach Article 8.

In sum, The ECtHR's case law recognises the possibility of ‘family life’ protected by Article 8 involving a range of relationships, including adult siblings, parents and adult children, and even people located outside the State altogether, when the facts show a relationship going beyond normal emotional ties. It also recognises a range of types of ‘dependency’ and demands a specific analysis in each case.

² [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-106282%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-106282%22]})

Further, the ECtHR recognises that a ‘private life’ claim that does not depend on family relationships at all may still succeed: a person's ties to their community, built through years of residence, work and social connection, and potentially rehabilitation after a conviction, are capable of engaging Article 8 regardless of whether the person has a partner, children, or any family relationship that would normally qualify as creating a ‘family life’. For example, a single person without a partner or children is not, on the Convention's own terms, outside the scope of Article 8's protection. A framing built around the ‘cohabiting’ household, or ‘dependency’, risks treating single people, and those whose closest relationships are not with a partner or minor child, as having a lesser claim to family and private life protection than others in similar circumstances of residence and community connection would have.

Recommendation

Parliament should scrutinise s.117AA against European Court and UK case law and allow for much greater discretion, allowing courts and tribunals to find a right to private or family life outside the ‘core cohabiting’ family or listed dependency factors. The court or tribunal’s analysis should be fact-specific in each case, and there should not be any presumptions that a certain type of relationship or dependency will not qualify.