Written evidence submitted by the Coalition for Marriage (C4M)

Immigration and Asylum Bill (Bill 105): clause 18 (family life), as amended, and clause 52(9)

To: the Public Bill Committee, on 19 October 2026. https://www.parliament.uk/business/news/2026/july-2026/immigration-and-asylum-bill-call-for-evidence/

Summary

- Clause 18 defines family life for Article 8 by who shares a home. A husband and wife who live apart normally fall outside that definition, and the Bill never uses the word “marriage”.

- Government amendment 44, made on 15 October, would make every mother and father relying on Article 8, even one who has always lived with the child, show a “genuine and subsisting parental relationship” with their own child.

- Clause 52(9) lets clause 18 be brought in with “retrospective effect”, by regulations no one votes on.

- We urge the Committee to leave out clause 52(9), then both Houses to count a spouse by a genuine marriage, not by a shared home, and reverse amendment 44.

About us

1. Coalition for Marriage was founded to champion marriage as the voluntary, exclusive, lifelong union of one man and one woman, and with it a child’s tie to their own mother and father. We take no view here on immigration numbers, only on what the law calls a family.

Clause 18 defines family by address

2. New section 117AA(1) says, “A person’s family life for the purposes of Article 8 is normally limited to their core cohabiting family.” Subsection (2) counts “A’s spouse, civil partner or partner” only “to the extent that A lives with them”. Between adults, subsection (4) says there is normally no family life unless “A and B live together as spouses, civil partners or partners” or there is dependency “beyond normal emotional ties”. https://publications.parliament.uk/pa/bills/cbill/59-02/0105/260105.html

3. So a husband and wife who live apart, because one works abroad or is waiting overseas for a visa, aren’t normally a family, and relying on each other “for emotional support” doesn’t count as dependency on its own (subsection (5)(c)). https://publications.parliament.uk/pa/bills/cbill/59-02/0105/260105.html The Bill counts an unmarried partner who shares the home, with no minimum period. The Committee voted down amendment 100, which would have required two years. https://hansard.parliament.uk/Commons/2026-10-15/debates/A3FC3AD1-11AA-44DF-8605-A384565E96F9/ImmigrationAndAsylumBill(SixthSitting)

4. The Government’s explanatory notes promise “a stronger emphasis on cohabitation” (paragraph 26), and neither they nor the Bill uses the word “marriage”. https://publications.parliament.uk/pa/bills/cbill/59-02/0105/en/260105en.pdf The stated aim is to stop “the creeping extension of Article 8 beyond immediate family members” (delegated

powers memorandum, paragraph 5). A husband and wife are the most immediate family there is. https://publications.parliament.uk/pa/bills/cbill/59-02/0105/DelPowersMemo.pdf

The law already starts from the marriage

5. The Immigration Rules recognise a spouse or civil partner by the marriage or civil partnership itself, and ask an unmarried partner for “a relationship similar to marriage or civil partnership for at least 2 years” (Appendix FM, GEN.1.2). They then ask whether the relationship is “genuine and subsisting”, and accept time apart where “there is good reason” (E-ECP.2.6 and E-LTRP.1.10). https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-fm-family-members Clause 18 would write the address, not the marriage, into statute.

6. The European Court of Human Rights starts from the marriage. In Abdulaziz, Cabales and Balkandali v the United Kingdom (1985) it held that a lawful and genuine marriage is “sufficient to attract such respect as may be due under Article 8”, even where family life “has not yet been fully established” (paragraph 62). https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-57416&filename=001-57416.pdf The same paragraph says a married couple’s family life “normally comprises cohabitation”, because the right to found a family includes “the right to live together”. Clause 18 turns that right into a test the marriage must pass.

A child’s tie to their mother and father

7. As introduced, new section 117AA(3) asks for “evidence that A has a genuine and subsisting parental relationship” only from a parent who doesn’t live with the child. Government amendment 44 struck out “with whom A does not live,” so that, in the Government’s own words, the test “also applies where the parent and child are cohabiting”. https://publications.parliament.uk/pa/bills/cbill/59-02/0105/amend/immigration_rm_pbc_1012.pdf https://hansard.parliament.uk/Commons/2026-10-15/debates/A3FC3AD1-11AA-44DF-8605-A384565E96F9/ImmigrationAndAsylumBill(SixthSitting) A mother who has lived with her child since birth would have to show the tie all the same.

8. The Minister said “biological parenthood alone is not enough to constitute family life”. https://hansard.parliament.uk/Commons/2026-10-15/debates/A3FC3AD1-11AA-44DF-8605-A384565E96F9/ImmigrationAndAsylumBill(SixthSitting) Strasbourg presumes the tie that amendment 44 makes every parent prove. A child born of a marriage “is ipso jure part of that relationship”, and “from the moment of the child’s birth and by the very fact of it” has family life with both parents, “even if the parents are not then living together” (Berrehab v the Netherlands, 1988, paragraph 21). “Subsequent events, of course, may break that tie”, the Court added, but the tie is the starting point. https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-57438&filename=001-57438.pdf

9. The Home Office says the aim is to stop migrants “bolstering their Article 8 claims by moving back into the family home shortly before making a claim”. https://www.gov.uk/government/news/migrants-exploiting-human-rights-laws-targeted-in-fresh-reforms The law already tests that at the public interest stage, where a parent who relies on a child to stay must show “a genuine and subsisting parental relationship” (section 117B(6)(a) of the Nationality, Immigration and Asylum Act 2002, which clause 19 keeps).

https://www.legislation.gov.uk/ukpga/2002/41/section/117B That's no reason to presume every mother or father has no family life with the child they live with.

10. The child's best interests are missing from the Government's case for amendment 44. In the proportionality assessment under Article 8, "the best interests of the child must be a primary consideration. This means that they must be considered first" (ZH (Tanzania) [2011] UKSC 4, paragraph 33). https://supremecourt.uk/uploads/uksc_2010_0002_judgment_6aef7c94ef.pdf The Home Office's supplementary human rights memorandum never mentions the child's best interests. Yet the memorandum says that without the parental relationship "Article 8 will generally not be engaged" (paragraph 19). Then the assessment that puts the child first never happens. https://publications.parliament.uk/pa/bills/cbill/59-02/0105/SuppECHRMemo.pdf Section 55 of the Borders, Citizenship and Immigration Act 2009 doesn't fill the gap amendment 44 widens. Its welfare duty binds the Home Office, not the court, and covers only "children who are in the United Kingdom". https://www.legislation.gov.uk/ukpga/2009/11/section/55

Retrospective commencement

11. Clause 52(9) says, "Regulations under this section made in connection with the coming into force of any provision of Part 2 may include provision that has retrospective effect." Part 2 includes clause 18, and clause 50(6) exempts these regulations from the Bill's rules on procedure. https://publications.parliament.uk/pa/bills/cbill/59-02/0105/260105.html The delegated powers memorandum says they "are not subject to any parliamentary procedure" (paragraph 125), and never mentions subsection (9). https://publications.parliament.uk/pa/bills/cbill/59-02/0105/DelPowersMemo.pdf Asked whether the new definition would apply to claims already made, the Minister replied that clause 52(9) "allows part 2 of the Bill to be commenced with retrospective effect". https://hansard.parliament.uk/Commons/2026-10-15/debates/A3FC3AD1-11AA-44DF-8605-A384565E96F9/ImmigrationAndAsylumBill(SixthSitting)

12. The Secretary of State could bring the new definition of family into force from a date already past, by regulations neither House votes on. A married couple's claim could then be judged by a test that wasn't law when they made it.

The Family Test

13. The Government's own Family Test asks of new and amended policies, "What impact could the policy have on family relationships and all family members' ability to engage in family life?" https://www.gov.uk/government/publications/family-test-assessing-the-impact-of-policies-on-families/the-family-test Neither impact assessment applies it. The final impact assessment rates the impact on households "Neutral", yet says the impact on those "prevented from sponsoring a family member" "could be significant" (paragraph 230). https://assets.publishing.service.gov.uk/media/6ace28a0c84c8ff1bc8b803a/2026-10-12_Impact_Assessment_-_Immigration_and_Asylum_Bill.pdf The equality impact assessment says marriage and civil partnership are "generally not identified as generating adverse impacts", and that the Rules "already give equal weight to subsisting partnerships akin to marriage or civil partnership". That ignores the distinction the Rules make between a spouse and an unmarried partner, which clause 18 erases. https://assets.publishing.service.gov.uk/media/6a43e259065c5aec12

a4e41e/Immigration_and_Asylum_Bill_EIA.pdf

Our asks

14. We urge the Committee to:

(a) leave out clause 52(9) or, if it stays, make regulations under it subject to approval by both Houses

(b) ask the Government to apply the Family Test to clause 18 and amendments 44 and 45, and publish the result before report stage.

We urge Members at report stage, and then Peers, to:

(c) amend new section 117AA(2) and (4)(a) so that a spouse or civil partner counts by the marriage or civil partnership itself, while it is genuine and subsisting, whether or not the couple live together

(d) keep the living-together test for unmarried partners, with the two-year minimum in amendment 100

(e) reverse Government amendment 44.

15. None of this gives anyone a right to enter or to stay. In Abdulaziz the Court held that Article 8 “was applicable” but, taken alone, not violated (operative part, point 1), and that it imposes no general obligation “to accept the non-national spouses for settlement” (paragraph 68). https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-57416&filename=001-57416.pdf Counting a marriage or a parent’s tie settles only whether Article 8 is engaged. The public interest question still decides each case, and clause 19 says “No weight should be given” to family life formed while a person is in the United Kingdom unlawfully. https://publications.parliament.uk/pa/bills/cbill/59-02/0105/260105.html

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