



CONSERVATIVE EUROPEAN FORUM

PATCHWORK QUILTS AND THREADBARE SOLUTIONS:

Why Proposals to Control Irregular Migration by
Leaving the ECHR Would Not Work

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May 2026

EXECUTIVE SUMMARY

- a. The proposal to withdraw from the European Convention on Human Rights is a false solution to a serious and pressing European challenge. It would fail to deliver solutions to irregular migration, whilst inflicting serious damage upon our domestic constitutional settlements, our international reputation and our practical security interests. A more honest and pragmatic conversation is required. It is only by working constructively with our European counterparts – in the Council of Europe, with the European Union, and with third countries – that the United Kingdom can address this challenge, to deliver a fairer and more efficient asylum system and to successfully deport foreign criminals.

- b. There is a serious problem to be solved. Politicians across Europe are under mounting pressure to tackle irregular migration. The recent migration summit in Chişinău in May 2026 has presented a considerable opportunity for the United Kingdom to take a leading role in shaping a collective European response. The expansive interpretation given to Article 3, particularly concerning healthcare and prison conditions, should be constrained to the most serious issues. The Article 8 proportionality assessment in migration cases is similarly in need of much firmer guidance for domestic immigration tribunals and officials. The Political Declaration takes positive steps in that direction, but continues to fall short of the scale of reform required.

- c. A shared European response must extend beyond the Convention itself to the practical mechanisms by which Contracting States return foreign nationals and deport foreign criminals to their countries of origin. The Home Secretary's recent threat of visa penalties to secure co-operation from Namibia, Angola and the Democratic Republic of Congo, demonstrates the value of a more robust, sanctions-based approach. We must now extend that approach on a collective European basis. Domestically, reform of the Human Rights Act, together with the Government's proposals for a strengthened public interest test, a narrower statutory definition of family life, and a single appeal route administered by an independent appeals body based on the Danish model, deserve support. Capacity in the asylum system has also proven a substantial challenge, with unresolved appeals in the UK having risen from 7,000 in early 2023 to 51,000 by the end of March 2025, with average waiting times of 54 weeks. Rebuilding what has become a broken system must be prioritised over ill-founded political discourse about the role of the Convention.

- d. The United Kingdom should also consider participating in the new EU Pact on Migration and Asylum when it replaces the Dublin Regulation in June 2026, and must urgently regain access to Eurodac and to SIS II, the absence of which has materially weakened our ability to control irregular migration.
- e. Withdrawal from the Convention, by contrast, would address none of these challenges. The argument that the ECHR has played a significant role in undermining the Government's immigration policy is not borne out by the evidence. According to the Bonavero Institute, only 922 foreign national offenders succeeded in appealing deportation on human rights grounds between April 2016 and June 2021 – a success rate of approximately 3.5%, falling to 2.5% on Article 8 alone. There have been only twenty-nine ECtHR judgments concerning appeals against removal from the United Kingdom since 1980, of which thirteen were upheld. The United Kingdom was found to have breached the Convention only once in each of 2023 and 2024, making it one of the most compliant states in the Council of Europe.
- f. It is unlikely that simply leaving the ECHR would deprive individuals of many of the protections on which they presently rely. As Lord Briggs has observed, Convention rights have enriched, but have not supplanted, the common law. In this regard, Lord Wolfson makes the point that withdrawal would not amount to the abandonment of fundamental rights protection. It must be asked what the underlying purpose of withdrawal really is. If, as appears to be the case, the intended consequence is subsequent primary legislation to strip back those pre-existing protections in order to enable a more stringent borders policy, the issue then arises whether it is wise to surrender our fundamental rights when, as this paper shows, there are no discernible benefits.
- g. The United Kingdom would also remain bound by our international obligations. As the Supreme Court made clear in the Rwanda litigation, the principle of non-refoulement is given effect not only by the ECHR but by other international conventions to which the United Kingdom is party, and may itself form part of customary international law. To free itself entirely, the UK would have to denounce, one by one, the very instruments it played a leading part in bringing into being.
- h. In particular, the ECHR is widely regarded as the cornerstone of the Council of Europe. All member states are required to respect their obligations under the Convention and accession to the Council must go together with becoming a party to the Convention. Withdrawal would represent a clear violation of those commitments and would expose the UK to suspension and ultimately expulsion from the Council of Europe, leaving us in the unwelcome company of Russia and Belarus.

- i. Convention rights are enshrined as governing the actions of the devolved administrations of Wales, Scotland and Northern Ireland, and legislation to alter their competence would engage the Sewel Convention, with significant political consequences for the stability of the Union. Most importantly, the ECHR forms a central part of the 1998 Belfast/Good Friday Agreement, which expressly commits the UK Government to the incorporation of Convention rights into Northern Ireland law. The suggestion advanced by the Wolfson Review and Policy Exchange that this commitment can be discharged by a Northern Ireland Bill of Rights detached from the Convention and therefore the right of appeal to the Strasbourg Court is a casuistical distortion of the plain words of the Agreement. Withdrawal would open the prospect of a new era of political discord quite apart from the impracticality of our courts having to operate different rights systems in one country. Furthermore, it does not address the fact that actions by the UK Government can also have an impact on Northern Ireland.

- j. The Windsor Framework prohibits any diminution in the UK of the protections set out in the Belfast/Good Friday Agreement insofar as this results from our departure from the EU, and based on the Supreme Court's recent decision in *Re Dillon*, it remains a prospect that incompatible legislation could still be challenged and disapplied. Part Three of the UK-EU Trade and Cooperation Agreement may also be terminated upon denunciation of the Convention, imperilling our access to Prüm, to Passenger Name Record data, and to our co-operation with Europol and Eurojust, as well as undermining the streamlined surrender arrangements that operate in place of the European Arrest Warrant. Reversion to the older Council of Europe extradition conventions, if we were even able to remain a member, would reintroduce delays, politicisation and procedural obstacles, increasing the risk of offenders evading justice.

- k. If the Conservative Party is to present a credible plan to tackle irregular migration at the next General Election, its commitment to withdraw from the European Convention on Human Rights must be reconsidered. That policy, and the advice upon which it is based – the Wolfson Review – rests principally upon the contention that the ECHR imposes substantial limitations upon the Government's ability to operate a stringent immigration policy, such that withdrawal constitutes a gateway condition for reform. Yet the legal and political consequences raised by Lord Wolfson remain unsolved. The Convention forms part of a patchwork of common law protections and international obligations from which the rights it embodies cannot easily be unpicked, and a policy of withdrawal would carry severe consequences for our domestic constitutional settlement and for our standing on the world stage that are disproportionate to any practical benefit it might secure.