



BRIEFING PAPER

Number 07511, 27 March 2020

The UK's refugee family reunion rules: a "comprehensive framework"?

By Melanie Gower, Terry McGuinness

Inside:

1. Family reunion under UK Immigration Rules and policy
2. Family reunion under EU law
3. Topical issues
4. Recent external scrutiny

Contents

Summary	3
1. Family reunion under UK Immigration Rules and policy	5
1.1 Who do the Rules apply to?	6
Unaccompanied children acting as sponsor	6
1.2 Alternative options for ineligible sponsors/relatives	7
Exceptional cases: leave 'outside the rules'	8
Article 8 ECHR and children's rights considerations	10
Refugee resettlement schemes	11
1.3 Recent application statistics	11
2. Family reunion under EU law	14
2.1 Dublin III Regulation	14
Differences between the Dublin III Regulation and the Immigration Rules	14
2.2 Statistics: Family reunion under Dublin Regulation	15
Improving the handling of Dublin transfer requests	15
2.3 Brexit implications	17
Replacing Dublin with a new agreement	17
Debate during passage of <i>EU (Withdrawal Agreement) Act 2020</i>	17
3. Topical issues	20
3.1 NGO campaigning, etc.	20
Applying the family reunion rules to a wider range of relatives	20
Allowing refugee children to sponsor applications	21
Fairness of Home Office decision making and access to legal advice	21
Legal aid	22
3.2 Private Members' Bills	23
4. Recent external scrutiny	24

Summary

The UK's Immigration Rules allow refugees to be joined in the UK by their immediate family members. Provisions in EU law (the Dublin III Regulation) can also be used to reunite with separated family members located in EU/EEA states.

The Dublin Regulation gives some families a chance of reunion in the UK that they would not otherwise have, because it applies broader eligibility criteria than the Immigration Rules. It will no longer apply in the UK after the Brexit transition period. This has given extra impetus to pre-existing calls to widen the scope of the UK's rules.

UK Immigration Rules

The UK's rules cater for a refugee's 'pre-flight' partner and dependent children (under 18). They do not allow unaccompanied refugee children to sponsor applications from family members. Refugee family reunion visas are issued free of charge and are exempt from some of the eligibility criteria that usually apply to family visa applications.

Relationships that aren't covered by the refugee family reunion rules, such as dependent adult relatives, adopted children, and 'post-flight' family members, are subject to different visa rules. These have significant application fees and more restrictive eligibility criteria, such as adequate maintenance funds and knowledge of English requirements.

There is scope to grant refugee family members leave "outside the Immigration Rules" in exceptional scenarios. This might apply, for example, in order to facilitate the entry of a dependent child over 18, or an unaccompanied child with a close relative in the UK. But campaigners argue that these applications are rarely granted, and that applicants would have greater certainty and superior rights if their circumstances were covered by the Immigration Rules rather than policy guidance.

Legal aid is available for family reunion applications in Scotland and Northern Ireland. It was removed for cases in England and Wales in 2013, but in late October 2019 it was reinstated for applications involving unaccompanied children.

Campaigners have criticised the rules for being too restrictive. Successive recent Governments have maintained that the rules and policy guidance provide a "comprehensive framework" for family reunion. They have expressed concern that more generous rules, including allowing child refugees to sponsor applications, might encourage asylum seekers to come to the UK and put children at greater risk of trafficking.

The Dublin III Regulation and Brexit implications

There are concerns that separated families, including unaccompanied children, may lose routes to family reunion if the UK doesn't negotiate an agreement with the EU or broaden the scope of its own Immigration Rules after the Dublin III Regulation ceases to apply.

The Government has confirmed that it intends to seek a family reunion agreement with the EU for separated children but has not made a similar commitment for adult cases. The EU has not formally indicated its position.

Statistics

The number of family reunion applications made to the UK under the Immigration Rules or Dublin III Regulation has increased in recent years. In 2018, the UK accepted 1,028 transfers on family reunion grounds under the Dublin Regulations. 159 were children joining relatives in the UK.

Refugee family reunion applications made under the Immigration Rules are not separately recorded but comprise the majority of the applications in the 'Family: Other' category.

1. Family reunion under UK Immigration Rules and policy

The *1951 Geneva Convention relating to the Status of Refugees* does not provide a right to family reunion for refugees, although the [Final Act of the Conference that adopted the 1951 Convention](#) recommended that signatory states “take the necessary measures for the protection of the refugee’s family”, with particular reference to ensuring that family unity is maintained, and the protection of refugees who are minors. The UNHCR Handbook states that, as a minimum requirement, such measures should apply to a refugee’s spouse and minor children.¹

A January 2018 publication by the Refugee Council and Oxfam, [Safe but not Settled](#), considered the impact of family reunion and enforced prolonged separation on resettled refugees’ ability to integrate successfully into UK society. It found that in most of the cases where families had been reunited, integration had been quicker and easier as a result. However, most of the people in the sample of 44 cases had not (yet) been able to reunite with their loved ones. This difficulty was said to “dominate(s) their lives”.

Box 1: Constituents in need of legal advice: useful sources

The following sources of general information may be useful sources for signposting constituents to:

- GOV.UK, [‘Settlement: refugee or humanitarian protection/family reunion’](#) – provides a general overview of how to apply
- Home Office, *Asylum Instruction, Family Reunion* (9 January 2020) – policy guidance used by Home Office caseworkers
- Free Movement Blog, [‘Refugee family reunion: a user’s guide’](#), 11 January 2016 – a blog post with practical guidance on how to apply

As always, constituents seeking legal advice about a personal case should be advised to speak to an immigration lawyer. The Immigration Law Practitioners’ Association publishes a [list of specialist practitioners](#) alongside information about the regulation of immigration advice, and the GOV.UK website page on [‘Find a regulated immigration adviser’](#) may also be helpful. The [British Red Cross](#) operates some international family tracing and family reunion services.

¹ [UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection](#), reissued February 2019, paras 181-188

1.1 Who do the Rules apply to?

Adult refugees (i.e. people who have been granted Refugee status or Humanitarian Protection)² may be joined in the UK by their immediate family members (i.e. partner and dependent children under 18) who formed part of their family unit before they fled to claim asylum, as per [paragraphs 352A-352FJ of Part 11 of the Immigration Rules](#).³

Successful applicants are given leave in line with the refugee sponsor (i.e. immigration permission for the same length of time and with the same conditions and entitlements). To obtain Refugee status in their own right (and the protections from removal that such status gives) they would need to successfully apply for asylum in the UK.⁴

There are various associated eligibility and evidential requirements. For example, partners must demonstrate that the relationship pre-dated the refugee's exile and is still subsisting, and that the two parties intend to live together as partners in the UK. Children must demonstrate that they are related to the refugee relative as claimed, are under 18, are unmarried and are not leading an independent life.

Refugee family reunion cases are exempt from some of the criteria that apply to other types of family visa application. For example, the refugee sponsor does not have to demonstrate that they will be able to adequately accommodate and maintain the family members without recourse to public funds, and the family members are not required to have any proficiency in English before coming to the UK. Also, refugee family reunion applications are free of charge (unlike most immigration application categories).

The Home Office's asylum policy guidance on [Family Reunion](#) contains further information about how applications should be assessed.

Unaccompanied children acting as sponsor

The refugee family reunion rules do not apply to the parents and siblings of a minor who has been granted Refugee status. There is no provision in the Immigration Rules for children who have been recognised as refugees to sponsor family members. Home Office guidance states that such applications should be referred for consideration of whether there are exceptional compassionate circumstances which would justify consideration 'outside the Immigration Rules' (discussed further below).

A refugee's partner and dependent children can join them in the UK under the family reunion rules, if they were part of the family unit before the refugee's exile.

Box 2: What do other countries do?

[EU Directive 2003/86/EC](#) on the right to family reunification covers family members of people granted Refugee status, as well as family members of other categories of migrant.⁵

² This includes refugees resettled under the Gateway, Mandate or Syrian Vulnerable Persons resettlement schemes.

³ HC 395 of 1993-4 as amended

⁴ [\[2019\] EWCA Civ 1670](#)

⁵ The UK was not bound by the Directive as an EU Member State due to exercising its 'opt-out' rights (as Denmark and Ireland also did).

7 UK refugee family reunion rules: striking the right balance?

Chapter V of the Directive specifically concerns refugee family reunion. It specifies that family reunion can be confined to 'pre-flight' family members, and to refugees granted Refugee status under the 1951 Convention (whereas the UK's rules also apply to family of people granted asylum on other grounds).

Eligible family members are the spouse and minor children (including adopted children). Member States may also authorise family reunion for other family members if they are dependent on the refugee.

Article 10(3) of the Directive allows for unaccompanied refugee children to sponsor family reunion applications (unlike the UK).

The Directive requires Member States to exercise a degree of flexibility in terms of the evidence required to substantiate an application, and states that applications should not be refused solely because documentary evidence is lacking (Article 11).

Some NGOs have been critical of how the Directive is applied in some Member States, citing examples of how in practice, more favourable rules are not applied for refugee cases (contrary to the Preamble to the Directive).⁶

1.2 Alternative options for ineligible sponsors/relatives

As previously indicated, the refugee family reunion rules exclude certain categories of UK-based sponsor, and certain categories of relative.

People who do not have Refugee status or Humanitarian Protection cannot act as sponsors under the family reunion rules to bring family to the UK. This includes:

- Asylum seekers
- A person with Discretionary Leave, Indefinite Leave (unless with Refugee status or Humanitarian Protection) or Leave 'outside the Rules'
- A person who has naturalised as a British citizen following a previous grant of Refugee status or Humanitarian Protection

Certain relatives are ineligible for entry under the refugee family reunion rules, including:

- Family members of child refugees
- Dependent children over 18
- Other dependent relatives (e.g. sibling, parent, aunt, grandparent)
- 'De facto' adopted children
- 'Post-flight' family members

In these circumstances, the sponsor/applicant must look to the broader family migration provisions in the Immigration Rules to see if they might be eligible for entry to the UK. These are the same rules that apply to British citizens and people with Indefinite Leave to Remain.

It may also be possible to obtain permission to come to the UK as an exception to the rules, or on the basis of Article 8 rights, for example.

Other dependent relatives must apply under different rules, which have more restrictive eligibility criteria

⁶ ECRE/Red Cross EU Office, [Disrupted Flight: the realities of separated refugee families in the EU](#), 2014

Immigration Rules for family members

The family migration rules are specified in [Appendix FM](#) and [part 8](#) of the Immigration Rules. There are significant application fees and more onerous eligibility requirements for these applications compared to those made under the refugee family reunion rules.

For example, the partner visa requirements are set out in Appendix FM, They include that the UK sponsor satisfies a [financial requirement](#) equivalent to a minimum income of at least £18,600 per annum, and that the partner has a basic level of competence in English.⁷ The application fee (as at January 2020) is £1,523 plus £1,000 for the [Immigration Health Surcharge](#).

Other adult dependent relatives (e.g. parents, siblings, children, grandparents) may be eligible for entry to the UK under Appendix FM if “as a result of age, illness or disability [they] require long-term personal care to perform tasks” and are “unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living, because ... it is not available ... or ... not affordable.” The application fee is £3520 (January 2020).

Separated children, including de facto adopted children, are eligible to join relatives who have Refugee status or Humanitarian Protection in the UK in accordance with paragraphs 319X – 319XB. The requirements include that “there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child’s care; the applicant is not leading an independent life; and the applicant will be accommodated and maintained adequately by the relative without recourse to public funds”. The application costs £388 (January 2020).

Exceptional cases: leave ‘outside the rules’

Ministers have countered arguments that the Immigration Rules are too tightly-drawn by highlighting the possibility of granting immigration permission “outside the Immigration Rules” in exceptional or compassionate cases. Answering a PQ in July 2019, the then Minister for Immigration, Caroline Nokes, clarified:

Where a refugee family reunion application does not meet the requirements of the Immigration Rules, caseworkers must consider whether there are any exceptional circumstances or compassionate factors which may justify a grant of leave outside the Immigration Rules. We revised our guidance in 2016 to include more detail on the types of case that may benefit from a visa outside the Rules, this includes young adult sons or daughters who are dependent on family here and living in dangerous situations.

Specifically, exceptional circumstances or compassionate factors apply where a refusal would either breach the right to respect for family life under Article 8 of the ECHR or result in unjustifiably harsh consequences for the applicant or their family.

It is for the applicant to demonstrate what the exceptional

⁷ The financial requirement is subject to exceptions for people in receipt of certain welfare benefits.

9 UK refugee family reunion rules: striking the right balance?

circumstances or compassionate factors are in their case. Each case must be decided on its individual merits.⁸

There is limited available data on the use of discretion in family reunion cases. Campaigners argue that in practice, most applications based on the guidance are refused (although some refusal decisions get overturned on appeal).⁹

The Home Office anticipates that few applications from parents and siblings of a child with refugee status would fall within the scope of the policy, as the guidance itself states:

Each case must be considered on its individual merits and include consideration of the best interests of the child in the UK. As the Immigration Rules are specifically designed to meet our obligations under the European Convention on Human Rights (ECHR) in respect of family or private life, it is not expected there will be significant numbers granted outside the rules. However, it is important that evidence relating to exceptional circumstances is carefully considered on its individual merits.¹⁰

It goes on to give some general guidance about considering exceptional circumstances or compassionate factors:

There may be exceptional circumstances raised in the application which make refusal of entry clearance a breach of ECHR Article 8 (the right to respect for family life) because refusal would result in unjustifiably harsh consequences for the applicant or their family. Compassionate factors are, broadly speaking, exceptional circumstances, which might mean that a refusal of leave to remain would result in unjustifiably harsh consequences for the applicant or their family, but not constitute a breach of Article 8.

It is for the applicant to demonstrate as part of their application what the exceptional circumstances or compassionate factors are in their case. Each case must be decided on its individual merits. Entry clearance or a grant of leave outside the Immigration Rules is likely to be appropriate only rarely and consideration should be given to interviewing both the applicant and sponsor where further information is needed to make an informed decision.¹¹

And some examples of cases that may justify a grant of leave outside the Rules:

- an applicant who cannot qualify to join parents under the rules because they are over 18 but all the following apply:
 - their immediate family, including siblings under 18 qualify for family reunion and intend to travel, or have already travelled, to the UK
 - they would be left alone in a conflict zone or dangerous situation
 - they are dependent on immediate family in the country of origin and are not leading an independent life

Home Office policy guidance gives some scope to make exceptions to the Immigration Rules

⁸ [Written Question 270742](#), answered on 3 July 2019

⁹ Refugee Council et al, *Without my family*, January 2020, p.22

¹⁰ Home Office, *Family reunion: for refugees and those with humanitarian protection*, v4.0, 9 January 2020, p.19

¹¹ Home Office, *Family reunion: for refugees and those with humanitarian protection*, v4.0, 9 January 2020, p.20

- there are no other relatives to turn to and would therefore have no means of support and would likely become destitute on their own
- where an applicant is an unmarried or same-sex partner and they meet all the requirements of paragraph 352AA with the exception that the sponsor was granted refugee status or humanitarian protection status before 9 October 2006
- where an applicant is an unmarried or same-sex partner and they meet all the requirements of paragraph 352AA except the requirement to live together and the caseworker is satisfied that they have evidenced that this would have put them in danger.¹²

Calls to incorporate exceptional cases guidance into the Immigration Rules

NGOs have argued that applicants would have greater certainty if the Immigration Rules reflected the guidance on exceptional cases. People granted leave under the Rules also usually have more beneficial rights than those granted outside the rules (e.g. leave in line with the refugee family member, rather than limited leave subject to additional restrictions).¹³

Article 8 ECHR and children's rights considerations

As referred to above, applicants who cannot satisfy the Immigration Rules requirements for refugee family reunion or entry as a dependent relative may be able to apply to join family members in the UK, based on the UK's commitments under international law.

In particular, Article 8 of the European Convention on Human Rights provides a qualified right to respect for family and private life. This right can be interfered with for the purpose of maintaining effective immigration controls, however the interference must be proportionate.¹⁴

A relevant consideration in cases involving refugees is that they cannot easily move to join their family members in their country of origin (owing to the past persecution they experienced there), and may be unable to obtain a visa to join them in a different country.

Furthermore, Article 3 of the [1989 UN Convention on the Rights of the Child](#) requires that the best interests of a child be the primary consideration in all actions concerning children. Section 55 of the *Borders, Citizenship and Immigration Act 2009* requires the Home Secretary to safeguard and promote the welfare of children in the UK. Although the statutory duty does not apply to children outside the UK,

There may also be scope to make an application based on human rights arguments

¹² Home Office, [Family reunion: for refugees and those with humanitarian protection](#), v4.0, 9 January 2020, p.20

¹³ Refugee Council and others, [Lords Briefing Refugee \(Family Reunion\) Bill – second reading, 15 December 2017](#)

¹⁴ [Section 117B of the Nationality, Immigration and Asylum Act 2002](#) (as amended) specifies certain factors that a court or tribunal must consider when assessing whether the interference is proportionate ("the public interest question").

11 UK refugee family reunion rules: striking the right balance?

Home Office policy guidance states that staff working overseas “must adhere to the spirit of the duty”.¹⁵

Immigration Judges in the Upper Tribunal, amongst others, have criticised the Home Office’s approach to Article 8 and section 55 considerations in some cases.¹⁶ There are examples of appeals succeeding on Article 8 grounds, although outcomes are highly fact-sensitive.¹⁷

Refugee resettlement schemes

Pre-flight family members of refugees who came to the UK under one of its resettlement schemes are eligible to join them in the UK through the family reunion Immigration Rules. Family reunion is also a potential grounds for eligibility for resettlement under these schemes (the ‘Mandate’ and ‘Gateway’ schemes, [Vulnerable Person Resettlement scheme](#), [“children at risk” scheme](#), and [‘Dubs scheme’ as per section 67 of the *Immigration Act 2016*](#)).

The UK’s various refugee resettlement schemes can also facilitate family reunion

A [new global refugee resettlement scheme](#), which will consolidate some of the above schemes, is due to be launched in 2020. A [separate Library briefing](#) considers the UK’s refugee resettlement schemes in detail.

1.3 Recent application statistics

Refugee family reunion applications made under the Immigration Rules are not separately recorded in the quarterly immigration statistics but comprise the majority of the applications in the ‘Family: Other’ category.

The table below shows the number of applications and decisions for visas in this category in the year ending September 2019, with comparisons to previous years ending September.

The year ending September 2019 saw the highest number of applications for ‘family: other’ entry clearance visas in the last eight years. The number of decisions on visas in this category has increased in recent years, doubling from 4,822 in the year ending September 2012 to 9,634 in the year ending September 2019.

In the year ending September 2019, 71% of applications in this visa category were granted. The annual refusal rate has ranged from 24% to 37% in the years since 2012.

¹⁵ Home Office/Department for Children and Families, [Every child matters](#), November 2009

¹⁶ See, for example, Refugee Council, Save the Children, Amnesty International, [Without my family](#), January 2020, p.22-23

¹⁷ See, for example, Free Movement Blog, [‘Upper Tribunal grants family reunion outside the Immigration Rules’](#), 3 March 2020

ENTRY CLEARANCE VISAS AND RESOLUTIONS IN THE 'FAMILY: OTHER'							
Years ending September							
	Applications	Resolved	Granted		Refused		Withdrawn or lapsed
			Number	%	Number	%	
2012	4,591	4,822	3,519	73%	1,151	24%	152
2013	6,221	6,278	4,192	67%	1,977	31%	109
2014	5,576	6,528	4,643	71%	1,764	27%	121
2015	7,622	7,433	4,504	61%	2,786	37%	143
2016	9,155	9,936	6,179	62%	3,697	37%	60
2017	7,344	7,704	5,136	67%	2,517	33%	51
2018	7,573	8,238	5,967	72%	2,229	27%	42
2019	9,634	9,634	6,857	71%	2,730	28%	47

Source: Home Office, [Immigration statistics, year ending September 2019](#), data tables Vis_D01 and Vis_D02; [Immigration Statistics: April to June 2017](#), Table vi_01_q

There are separate statistics on family reunion visas granted by nationality. These are a subset of the 'Family: other' visa category.

The table overleaf shows the top ten countries of nationality for family reunion visas granted in the year ending September 2019, with comparisons to the previous year.

Just over a fifth (22%) of refugee family reunion visas granted in the year ending September 2019 were to Eritrean nationals. This was a smaller percentage than in the year ending September 2018 when over a quarter (26%) of visas granted in this category were to Eritrean nationals.

The top five countries of nationality accounted for 67% of family reunion visas granted in the year ending September 2019, while the top ten countries of nationality accounted for 81% of visas granted (bearing in mind that one of the nationality categories is 'stateless'). The percentages were similar in the previous year.

Overall the number of refugee family reunion visas granted rose by 160 between these two periods, which was a rise of around 3%.

13 UK refugee family reunion rules: striking the right balance?

ENTRY CLEARANCE VISAS GRANTED BY TOP 10 COUNTRIES OF NATIONALITY: REFUGEE FAMILY REUNION						
Years ending September 2019 and September 2018						
Row Labels	Rank		Number		Change on previous year	
	YE Sep 2019	YE Sep 2018	YE Sep 2019	YE Sep 2018	Number	%
Eritrea	1	1	1,306	1,512	-206	-14%
Iran	2	3	1,053	768	285	37%
Sudan	3	2	707	904	-197	-22%
Syria	4	4	683	575	108	19%
Afghanistan	5	7	267	200	67	34%
Sri Lanka	6	8	231	181	50	28%
Pakistan	7	9	205	174	31	18%
Ethiopia	8	5	183	263	-80	-30%
Somalia	9	6	159	232	-73	-31%
Stateless	10	10	119	149	-30	-20%
Total	.	.	6,035	5,875	160	3%

Source: Home Office, [Immigration statistics, year ending September 2019](#), data table Fam_D01

2. Family reunion under EU law

2.1 Dublin III Regulation

Separate to the UK's Immigration Rules, EU law enables people who have already entered Europe as asylum seekers and have family living in the UK to be transferred to the UK for consideration of their case. The [Dublin III Regulation](#) ('the Dublin Regulation') applies to all EU/EEA Member States.

The EU's Dublin Regulation facilitates family reunion for asylum seekers with family members in other Member States

Being transferred under the Dublin Regulation is not directly comparable to a grant of leave to enter/remain under the UK Immigration Rules in various respects.

The primary objective of the Dublin Regulation is not family reunion. Rather, its purpose is to specify a hierarchy for determining which Member State should be responsible for processing an asylum claim made by someone who has entered the EU. However, the Regulation does prioritise respect for family reunion above certain other considerations, such as which EU state the person initially entered.

Formal transfer requests are initiated by the state authorities rather than by the individual applicant/sponsoring family member. Furthermore, the Dublin Regulation only determines which country a person can stay in whilst they claim asylum. If asylum is refused, the applicant would be expected to return to their country of origin (or make a new application in a different immigration category).

Differences between the Dublin III Regulation and the Immigration Rules

Because it applies different eligibility criteria for sponsors and relatives compared to the UK Immigration Rules, the Dublin III Regulation gives some refugee families a route to reunion in the UK that they would not otherwise have. For example:

- **Unaccompanied children can join a 'family member' (parent/responsible adult), sibling or other relative (adult aunt, uncle, grandparent) who is 'legally present'** in a host state (Article 8). 'Legally present' includes those who are seeking asylum, have a valid visa, immigration status, or who have gained citizenship of the host state.
- **Refugees' pre- or post-flight 'family members' (spouse/partner or minor children) are eligible** to join them in the host state (Article 9).
- **Parents can join children** under 18 who have been granted Refugee status (Article 9).
- **Pre-flight family members of asylum seekers** waiting for an initial decision can join them in the host state (Article 10).

Some of the family reunion scenarios provided for by the Dublin Regulation are similar to those allowed for in the UK Immigration Rules but more accessible in practice, for example due to:

- absence of application fee
- lower evidential requirements and qualifying criteria.

15 UK refugee family reunion rules: striking the right balance?

Furthermore, Article 17 of the Regulation enables participating States to exercise discretion in order to reunite individuals who are part of an extended family group “based in particular on family or cultural considerations”.

2.2 Statistics: Family reunion under Dublin Regulation

There has been a significant increase in the number of ‘Dublin’ transfers to the UK on family reunion grounds since 2016, including minors transferred under Article 8 of the regulation. These increases have contributed to the UK becoming a net recipient of migrants under the Dublin III Regulation in recent years.

TRANSFERS TO THE UK UNDER THE DUBLIN REGULATION			
Year	In any family reunion		
	Transfers to UK (total)	category (Art. 8, 9, 10, 11)	Child joining relative in UK (Article 8)
2014	69	8	6
2015	131	31	24
2016	558	330	175
2017	461	295	92
2018	1,215	1,028	159

Source: 2014 data from [Eurostat, Incoming Dublin transfers by submitting country \(PARTNER\), legal provision and duration of entry](#) (last updated 17 September 2019); 2015-18 data from Home Office, [Immigration statistics quarterly, year ending September 2019](#), table Dub_D01

Improving the handling of Dublin transfer requests

Criticisms have been made that the Dublin protections are difficult to access in practice, and that the process for transferring cases is slow and bureaucratic.

Chapter VI of the Regulation details the process and timetable for initiating and implementing transfers of cases between Member States. The end to end process between lodging a “take charge request” and implementing the transfer (if agreed to) can take eleven months. States can request urgent responses in certain scenarios.

The UK Government maintains that a person must first claim asylum in another Member State in order to initiate a transfer to the UK. This position was upheld by the Court of Appeal in a case involving four young Syrians who were living in the ‘jungle’ camp in Calais and seeking to reunite with siblings in the UK who had already been granted Refugee status.¹⁸

Responding to criticisms about the length of time taken to transfer cases to the UK, Brandon Lewis, Minister of State for Security, referred to the increase in number of take charge requests (‘TCR’) received. He also commented:

¹⁸ Secretary of State for the Home Department v ZAT & Others [\[2016\] EWCA Civ 810](#)

The processes involved to make a request vary in all Member States depending on the circumstances of each person who may be eligible to transfer under the Dublin provision, and will also depend on the domestic laws and processes within that govern that country in respect of supporting asylum seekers and unaccompanied children. Upon receiving a TCR it is important that Member States act in the best interest of the child. We work closely with the Department for Education (DfE) and with local authorities to develop and improve the processes for consideration of a TCR for an unaccompanied child, with a view to achieving the efficient and effective discharge of our obligations under Dublin III, ensuring there is proper regard to the best interests of each child. To make these necessary checks takes time to enact working with appropriate partners. It is only right that sufficient time is dedicated to these important steps.¹⁹

When children are transferred under the Dublin provisions to join a relative in the UK, local authorities must assess the relatives' suitability to care for the child. If deemed unsuitable, or the placement subsequently breaks down, the child is put under the care of the local authority of the placement.²⁰

A series of measures introduced by the UK and international partners over recent years have aimed to improve the identification of cases eligible for a transfer to the UK and reduce the length of time they take to process. For example:

- Agreeing, in the joint UK-France declaration of August 2015, to establish a permanent contact group to improve operational effectiveness in implementing Dublin transfers from France, and running communication campaigns in northern France about the right to claim asylum and the family reunion process.
- Announcing, in January 2016, a new £10 million fund to support the needs of vulnerable migrant and refugee children in Europe, which will be partly used to support the Dublin provisions by assisting to identify children who need to be reunited with family members.
- Seconding Home Office officials to France, Italy and Greece to improve the handling of Dublin transfer cases.
- Relocating 769 unaccompanied children from a migrant camp in Calais to the UK in support of the camp clearance (549 to reunite with families in the UK and 220 under section 67 of the *Immigration Act 2016*).²¹
- Agreeing, as part of the UK-France [Sandhurst Treaty](#) of January 2018, shorter timescales for handling Dublin transfer requests (with particular reference to unaccompanied minors), and a £3.6 million fund to support cases eligible for transfer, including provision of training, family tracing services and information campaigns.²²

¹⁹ Lords EU Committee (Home Affairs Sub-Committee), [Brexit: refugee protection and asylum policy](#), HL Paper 428, 11 October 2019, Appendix 7

²⁰ Local Government Association, Briefing, [Backbench Business Committee debate on refugees and unaccompanied asylum seeking children](#), 23 February 2017

²¹ [PQ20116](#), answered on 19 December 2018

²² [PQ229183](#), answered on 11 March 2019; [Treaty between the Government of Great Britain and Northern Ireland and the Government of the French Republic concerning](#)

2.3 Brexit implications

The Dublin Regulations will no longer apply to the UK after the end of the transition/implementation period (currently, 31 December 2020).

Replacing Dublin with a new agreement

The Government does not intend to seek 'third party' access to the Dublin system at the end of the transition period. Instead, it wants to secure a new "reciprocal returns agreement" with the EU to facilitate the return of non-European asylum seekers and irregular migrants to the country they entered the UK/EU from. The Government does not intend that this new agreement would merely replicate the provisions of the Dublin Regulations.²³

Some stakeholders are concerned that, unless comparable replacement arrangements are put into place, ending the UK's participation in the Dublin Regulation will remove a safe and legal route for family reunion for asylum seekers in Europe with family members in the UK.

The Government has only committed to seeking a replacement for the Dublin family reunion provisions to enable unaccompanied children in Europe to join relatives in the UK (and vice versa).²⁴ Refugee advocates want a more comprehensive replacement which would also apply to adults.

An October 2019 report of an inquiry by the Lords EU (Home Affairs) Committee found that it is "imperative" that leaving the EU should not restrict refugee family reunion rights. It continued:

(...) All routes to family reunion available under the Dublin System should be maintained in the new legal framework for UK-EU asylum cooperation, together with robust procedural safeguards to minimise delays in reuniting separated refugee families. Neither the UK nor the EU should contemplate vulnerable people who have already experienced trauma facing additional suffering as a result of Brexit. Consideration should therefore be given to establishing interim arrangements for refugee family reunion, even if other aspects of future UKEU asylum cooperation prove more difficult or time consuming to negotiate.²⁵

Debate during passage of *EU (Withdrawal Agreement) Act 2020*

Section 17 of the [European Union \(Withdrawal\) Act 2018](#) ('EUWA 2018'), as passed, obliged the Government to seek to negotiate a post-Brexit agreement with the EU to facilitate family reunion for unaccompanied children in the EU/UK. It was a non-government amendment added at Lords Report stage. It is often referred to as the 'Dubs amendment', after its sponsor (Lord Dubs).²⁶

[the reinforcement of cooperation for the coordinated management of their shared border](#)

²³ Lords EU Committee (Home Affairs Sub-Committee), [Brexit: refugee protection and asylum policy](#), HL Paper 428, 11 October 2019, Appendix 7

²⁴ [PO 29067 \[on Asylum\]](#), answered on 7 October 2019

²⁵ Lords EU Committee (Home Affairs Sub-Committee), [Brexit: refugee protection and asylum policy](#), HL Paper 428, 11 October 2019

²⁶ Amendment 59, agreed on division by 205 to 181.

Section 37 of the [European Union \(Withdrawal Agreement\) Act 2020](#) ('EUWAA 2020') amended section 17 of the 2018 Act. It replaced the requirement to seek to negotiate an agreement with an obligation on a Government Minister to make a single policy statement to Parliament "in relation to any future arrangements" between the UK and EU about these unaccompanied children.

The Government [published its policy statement](#) on 16 March 2020. The substantive part confirms:

3.(...). At the first round of negotiations on the UK-EU future relationship, which took place from 2-5 March 2020, negotiators from the UK set out the UK's proposals, in line with the document 'The Future Relationship with the EU – The UK's Approach to Negotiations'.

4. We are seeking an arrangement with the EU which would allow unaccompanied children seeking international protection in either the UK or the EU to join, where it is in the child's best interests, a "relative" as specified under section 17(4) of the EU (Withdrawal) Act 2018 who is either a lawful resident of the UK or an EU Member State, or who has made a claim for international protection that has not yet been decided in the UK or an EU Member State.

5. The UK position is clear that our exit from the EU should not affect our commitment to continue working together with the EU to reunite unaccompanied asylum-seeking children with family and keep them safe. Any future arrangement with the EU is a matter for negotiations, and we understand that the EU is considering further the UK's proposals in this area.

Related controversy - why did the Government amend the 2018 legislation?

The Government has consistently rejected criticisms that the amended 2018 Act reflects a diluted commitment to preserving family reunion options for separated children. It maintains that its policy has not changed.

During the passage of the 2020 Act Ministers were consistently pressed to explain why it was considered necessary to amend the 2018 Act. They variously responded that the amended section 17 "[clarified] the role of Parliament and Government in negotiations"²⁷, and that removing the statutory obligation to negotiate was "entirely appropriate", since discussions with the EU had already been initiated.²⁸ Steve Barclay, Minister for exiting the EU expanded on these themes during debate at ping-pong stage:

I can only say again, as I did in our previous debates, that the Government's policy is unchanged. Delivering on it will not require legislation. The Government have a proud record on supporting the most vulnerable children. The UK has granted protection to more than 41,000 children since the start of 2010. In 2018, the UK received more than 3,000 asylum applications from unaccompanied children, and the UK deals with 15% of all claims in the EU, making us the country with the third highest

²⁷ [PO 3310](#) [Immigration: Northern Ireland], answered on 20 January 2020

²⁸ [HL Deb 13 January 2020 c456](#) The Home Secretary

19 UK refugee family reunion rules: striking the right balance?

intake in Europe. Indeed, in the year ending September 2019 the intake rose to more than 3,500.

[Stephen Timms \(East Ham\) \(Lab\)](#)

I am pleased that the policy has not changed, but why is the Secretary of State changing the legislation?

[Steve Barclay](#)

The right hon. Gentleman pre-empted the passage that I am just coming to.

As hon. Members will be aware, my right hon. Friend the Home Secretary wrote to the European Commission on 22 October on this very issue. The amendment in no way affects our commitment to seek an agreement with the EU. Primary legislation cannot deliver the best outcomes for these children, as it cannot guarantee that we will reach an agreement. That is why this is ultimately a matter that must be negotiated with the EU. The Government are committed to seeking the best possible outcome in those negotiations.²⁹

An amendment to leave out clause 37 was approved at Lords Report stage.³⁰ But it was overturned when the Bill returned to the Commons, and the Lords did not seek to reinstate it.³¹

²⁹ [HC Deb 22 January 2020, c318-9](#)

³⁰ [Division 1: HL Deb 21 January 2020 c1053](#)

³¹ [Division 23: HC Deb 22 January 2020 c347](#)

3. Topical issues

3.1 NGO campaigning, etc.

Many stakeholders in the asylum/refugee sector have formed the [‘Families Together’](#) campaign coalition. They are calling on the government to expand the scope of the family reunion rules, including by allowing refugee children to sponsor applications, and reinstate legal aid for these applications (in England and Wales).

Campaigners want the Immigration Rules to cover more family relationships, and for legal aid to be available for applicants

Successive recent governments have maintained that the UK has a “comprehensive framework” of rules and policy which provides a safe and legal route for refugee family reunion.

In late October 2019 legal aid was reinstated in England and Wales for unaccompanied children’s immigration cases (including family reunion), partly in response to campaigning and legal action.³²

Applying the family reunion rules to a wider range of relatives

Campaigners argue that the refugee family reunion rules should be expanded to cover all relationships where the applicants are dependent on the sponsor. A representative from the NGO Safe Passage gave an example of why this is considered necessary, in evidence to the Lords EU Committee:

Campaigners want all dependent relationships to be covered by the refugee family reunion rules

“You might feel, ‘I can understand that it’s in the best interests of the child if we’re reuniting them with a parent, for example, but maybe it’s not so important if it’s an aunt’, but often these people have come on very perilous journeys. We have certainly had to deal with people who have lost family members on the way; they did not start out as an unaccompanied minor but lost family members in the Mediterranean, and their last living relative might be an aunt or uncle in the UK. That shows you how important it is to have that family link rather than leaving a child unaccompanied and without parents in Greece.”³³

Ministers have raised concerns that widening the eligibility criteria might act as a pull factor for further asylum claims.³⁴ David Simmonds MP, former Chair of the Local Government Association’s Asylum, Migration and Refugee Task Group, made a similar point during his maiden speech in Parliament. Referring to his experience of visiting migrant camps in Calais, Mr Simmonds argued that the Dublin provisions:

have long been seen ... as an exploitable route for traffickers to create the opportunity of family reunion and encourage people to consign vulnerable people, sometimes children, to the backs of lorries and to dinghies across the channel in an attempt to open a family reunion route.³⁵

³² Legal aid is available for family reunion applications in Scotland.

³³ Lords EU Committee, Brexit: refugee protection and asylum policy, HL Paper 428, 11 October 2019, para 133

³⁴ [PQ 268562](#) [on Refugees], answered on 2 July 2019; [HC Deb 1 Dec 2015 c228](#)

³⁵ [HC Deb 9 January 2020 c685](#)

Allowing refugee children to sponsor applications

The Government is being urged to change the Immigration Rules to allow child refugees to sponsor family members under the refugee family reunion rules, just as adult refugees can.

Research published by the Refugee Council, Save the Children and Amnesty International in January 2020, [Without my family](#), considered the impact of current policy on unaccompanied refugee children living in the UK. It concluded that the current policy “unfairly compromised children’s lives in the UK”, was at odds with national and international obligations, and was not supported by evidence.³⁶

The UK has the most restrictive policies on child family reunion compared to EU countries and these policies are at odds with the UK’s legal obligations under national, international and regional human rights law as well as international humanitarian and refugee law. The failure to provide family reunion for children to be reunited with their adult family members does not include full consideration of a child’s best interests. The best interests of a child require consideration of a durable solution, which includes reunion with parents and siblings. ... child refugees in the UK are condemned to live apart from their family, often growing up instead in the UK care system. This puts at risk their safety and wellbeing in the UK.

Being reunited with close family is often critical to a refugee’s chances of integration and recovery. Being separated from immediate family is clearly not generally in the child’s best interests and is potentially damaging to their welfare and development.³⁷

A 2016 inquiry by the Home Affairs Committee described the distinction between the sponsoring rights of child and adult refugees as “perverse”.³⁸ The Government’s response countered that letting children sponsor other family members would risk creating a perverse incentive for children to make dangerous journeys to the UK, and that such cases are sufficiently covered by the guidance on exceptional circumstances.³⁹

Fairness of Home Office decision making and access to legal advice

Campaigners have argued that family reunion applications (whether under the Rules or as exceptional circumstances) can be far from straightforward, and that applicants need access to quality legal advice, (and legal aid).

The Independent Chief Inspector of Borders and Immigration inspected the Home Office’s handling of family reunion applications in 2016. This was prompted by stakeholders’ concerns about the Home Office’s

The Government is concerned that allowing child refugees to sponsor relatives to join them would create incentives for children to travel to the UK

³⁶ Refugee Council, Save the Children, Amnesty International, [Without my family](#), January 2020

³⁷ Refugee Council, Save the Children, Amnesty International, [Without my family](#), January 2020, p. 26

³⁸ Home Affairs Committee, [The work of the Immigration Directorates \(Q1 2016\)](#), 27 July 2016, HC 151 2016-17, para 41

³⁹ Home Affairs Committee, [The work of the Immigration Directorates \(Q1 2016\): Government response](#), 26 October 2017

approach to assessing applications. The report found that “Overall, ... the Home Office was too ready to refuse applications where it judged that the applicant had failed to provide sufficient evidence to satisfy the eligibility criteria, when deferring a decision to allow the applicant to produce the ‘missing’ evidence might be the fairer and more efficient option.”⁴⁰ A follow-up inspection took place in 2018 (discussed in section 4 of this briefing).

Brandon Lewis MP, Home Office Minister of State, set out the Department’s approach (to Dublin and Immigration Rules applications) in a letter to the Lords EU Committee in autumn 2019:

There is an established process under the Dublin Regulation’s Implementing Regulation whereby the requesting State can ask for a reconsideration of a decision to reject a request and where additional evidence can be provided. Where we reject a [take charge request], the Home Office provides the requesting State with a full explanation of the reasons in our rejection letter. The Home Office also recently revised its guidance on the refugee family reunion Immigration Rules, to streamline the process and make it clearer for applicants and sponsors to understand what is expected of them, including the types of documentary evidence that can be provided to support an application. The revised guidance recognises the challenges applicants face in obtaining documents to support their application. (...) Every family reunion application is carefully considered with sensitivity and compassion on its individual merits based on the evidence provided by the applicant and their sponsor.⁴¹

Legal aid

Legal aid is a devolved matter. Legal aid is available for family reunion applications in Scotland and Northern Ireland.

Family reunion applications were removed from the scope of legal aid in England and Wales with effect from April 2013, by the *Legal Aid, Sentencing and Punishment of Offenders Act 2012*. The then Government took the view that such applications were straightforward and constituted an “immigration” rather than “asylum” matter (asylum matters remain in scope). Taking these cases outside the scope of civil legal aid meant that, as per [section 10 of LASPO](#), legal aid could only be granted for cases deemed to be “exceptional”.

Reintroducing legal aid for cases involving separated migrant children

With effect from 25 October 2019, legal aid [has been reintroduced](#) in England and Wales for immigration cases involving unaccompanied and separated migrant children.⁴² This includes applications for entry clearance, leave to enter or remain made by the child’s family members or extended family members, whether within or outside of the Immigration Rules.

⁴⁰ Independent Chief Inspector of Borders and Immigration, [An inspection of family reunion applications January to May 2016](#), September 2016, p.2

⁴¹ Lords EU Committee, [Brexit: refugee protection and asylum policy](#), HL Paper 428, 11 October 2019, Appendix 7

⁴² [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Legal Aid for Separated Children\) \(Miscellaneous Amendments\) Order 2019](#), SI 2019/1396

23 UK refugee family reunion rules: striking the right balance?

This decision was announced in July 2018.⁴³ It followed consultation with stakeholders and related legal action. The [Children's Society](#), with support from [Islington Law Centre](#) and the [Migrant and Refugee Children's Law Unit](#) (MiCLU), had initiated judicial review proceedings against the Government.

After a considerable delay, regulations took effect on 25 October 2019.

3.2 Private Members' Bills

In recent years there have been attempts to compel the Government to broaden the scope of the UK's family reunion rules through Private Members' Bills.

Most recently, Baroness Hamwee's [Refugees \(Family Reunion\) \[HL\] Bill 2019-20](#) had its first reading in the Lords on 9 January 2020.

Baroness Hamwee had initiated a similar Bill in the Lords in the 2017-19 session, as did Angus MacNeil in the Commons:

- [Angus Brendan MacNeil's Refugee \(Family Reunion\) \(No.2\) Bill 2017-19](#)
- [Baroness Hamwee's Refugee \(Family Reunion\) \[HL\] Bill](#)

Both Bills sought to widen the scope for eligibility for refugee family reunion, including to allow separated children to sponsor family members, and to bring such applications within the scope of legal aid.

The Bills attracted considerable cross-party support. However both stalled due to a lack of Parliamentary time.

A [letter urging action](#) on Angus MacNeil's Bill, dated 15 March 2019, was sent to the then Home Secretary and signed by 66 MPs.

The then Government's position on the Bills was that the Immigration Rules and policy guidance already provide a "comprehensive framework" for refugee family reunion. It maintained that primary legislation was not necessary, arguing that instead the focus should be on developing existing policy and processes in to ensure it is effectively implemented.⁴⁴

⁴³ HCWS853, 12 July 2018

⁴⁴ [HL Deb 15 December 2017 c1786-7](#)

4. Recent external scrutiny

Chief Inspector of Borders and Immigration

- [*An inspection of family reunion applications January to May 2016*](#), September 2016 and [*Government response*](#)

The Chief Inspector found that the Home Office was too ready to refuse applications, and that deferring a decision to allow applicants to provide the necessary evidence might have been a fairer and more efficient approach. He made ten recommendations which were all accepted by the Home Office. They were intended to help the Home Office “to reassure applicants, stakeholders and others that it recognises the particular challenges surrounding Family Reunion applicants, and that it manages applications not just efficiently and effectively, but thoughtfully and with compassion.”

- [*A re-inspection of the family reunion process, focusing on applications received at the Amman Entry Clearance Decision Making Centre November 2017 – April 2018*](#), September 2018 and [*Government response*](#)

A substantive follow-up report was published in 2018. The Independent Chief Inspector classified eight of the ten recommendations in the 2016 report as still outstanding, deeming that “the pace at which the Home Office is moving is far too slow given the profound impact on the lives of families seeking to be reunited”.

Lords EU Committee (Home Affairs Sub-Committee)

- [*Brexit: refugee protection and asylum policy*](#), HL Paper 428, 11 October 2019

The Committee gave detailed consideration of the implications of Brexit for the UK’s future relations with the EU on refugee and asylum policy, including securing continued participation or a replacement for the Dublin III Regulations, and broader issues relating to the functioning of the asylum system and opportunities for reform.

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publicly available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email hcinfo@parliament.uk.

Disclaimer - This information is provided to Members of Parliament in support of their parliamentary duties. It is a general briefing only and should not be relied on as a substitute for specific advice. The House of Commons or the author(s) shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice.

The House of Commons accepts no responsibility for any references or links to, or the content of, information maintained by third parties. This information is provided subject to the [conditions of the Open Parliament Licence](#).