

British Red Cross

European Union (Withdrawal Agreement) Bill Committee Stage Briefing

Wednesday 8 January 2020

Clause 37: Arrangements with EU about unaccompanied children seeking asylum and amendments 4, 26, 28 and 29

Since 2014, the Dublin System has become an increasingly important route for families who are separated across Europe as a result of war and persecution to be reunited. The Dublin System, implemented through the Dublin III Regulation, allows individuals who have made an asylum application in one EU country to be transferred to another EU country, if they have a qualifying family member living there.

When the UK leaves the European Union, it will no longer be part of the Dublin System. If the Withdrawal Agreement is in place, then this will happen at the end of the transition period in December 2020. If the UK were to leave without a withdrawal agreement, then it would occur at 11pm on 31 January 2020.

As a result of the importance of the Dublin System for reuniting separated children with their loved ones, an amendment was made to the European Union (Withdrawal) Act 2018 that placed an obligation on the Government to seek to maintain, through negotiations with the European Union, the existing rights of separated children. Clause 37 of the European Union (Withdrawal Agreement) Bill removes this obligation and replaces it with a requirement for a statement of policy to be laid before parliament within two months of the Bill gaining Royal Assent.

The British Red Cross believes that the ability for refugees and people seeking asylum to reunite with family members should not be diminished as a result of the UK leaving the European Union. To do so would potentially increase the likelihood that people would resort to placing their lives in the hands of people smugglers and embarking on dangerous journeys to be with their loved ones.

The British Red Cross encourages Members of Parliament to:

- **Speak in support of retaining family reunion rights when the UK leaves the European Union**
- **Support amendments 4, 26, 28 and 29 that will be debated on Wednesday 8 January**

For more information about the contents of this briefing, please contact Jon Featonby, Policy and Advocacy Manager (Refugees and Asylum), jfeatonby@redcross.org.uk.

Family Reunion before Brexit

There are currently two main routes that refugee and asylum-seeking families can access to reunite in the UK. These are the UK's own domestic immigration legislation, set out in the Immigration Rules, and the European Union's Dublin System.

Family Reunion Routes

UK Immigration Rules:

- Set out the UK's domestic immigration rules, including on refugee family reunion
- Part 11 of the rules allow for adult refugees in the UK to sponsor their spouses/partners and children under the age of 18 to join them
- Paragraph 319X allows separated children to join wider relatives who have been recognised as refugees in the UK, such as aunts, uncles and siblings, but there is a £388 application fee and other restrictive requirements
- Can be amended without primary legislation

The Dublin System:

- Sets out which Dublin Member State (the EU 28 plus four EEA countries) is responsible for an asylum application
- Contains a hierarchy for deciding which Member State should be responsible, which places family unity as the primary consideration
- Hierarchy is set out in specific articles of the Dublin III Regulation including:
 - Articles 8.1 and 8.2 on separated children
 - Article 9 on applicants joining wider family members with refugee status
- If an individual makes an application for asylum in one Member State and has a family member in another Member State, the first country can ask for the asylum application to be transferred to the second country

While an average of around 5,200 people are reunited under the UK's domestic legislation each year, more recently the Dublin System has become an increasingly important route for families across Europe to reunite in the UK. In 2014, only 31 people were reunited through the Dublin System—by 2018 this had increased to 1,028.

While the UK's domestic legislation contains routes for families to be reunited, British Red Cross analysis has identified significant circumstances where the Dublin III Regulation allows families to reunite that are not replicated in domestic legislation. As a result, leaving the Dublin System would potentially leave family members in Europe, including separated children, without a safe and legal way to reach their loved ones in the UK.

In order to avoid this, the British Red Cross has recommended that the UK Government should:

- 1) Negotiate an agreement with EU countries to maintain the rights for families seeking asylum to reunite with family members in the UK.**
- 2) Amend UK domestic legislation to simplify the process for families seeking to reunite.**

Family Reunion Under the Dublin III Regulation

According to Home Office statistics, around 15% (159) of family reunions through the Dublin System in 2018 allowed separated children who were in Europe to be reunited with family members in the UK.

Articles 8.1 and 8.2 of the Dublin III Regulation allow for separated children who have made an asylum application in an EU country to join relatives in the UK, if that relative either has an outstanding asylum application or has secure immigration status. Article 8.1 allows a child to join their parent, sibling or spouse/partner, while article 8.2 covers wider family members including grandparents and uncles or aunts.

Under the UK's domestic immigration rules, separated children are only able to join relatives who have been granted refugee status by the UK Government, and there are particular barriers even where this is the case. While children can join their parents in the UK under Part 11 of the Immigration Rules, this *does not* cover cases of de-facto adoption or instances where a child has been born after the family were forced to flee their home. **Both of these instances are currently covered by the Dublin III Regulation.**

For wider family members – siblings, grandparents, aunts and uncles – there are additional barriers. Applications for children to reunite with these relatives is possible under paragraph 319X of the Immigration Rules, but there are a number of reasons why family reunion under the Dublin III Regulation is easier to access, including:

- An application under paragraph 319X of the Immigration Rules costs £388 (compared to no fee through the Dublin System).
- Stricter requirements for relatives to show they can financially support and accommodate any child without recourse to public funds under paragraph 319X of the Immigration Rules than under the Dublin System.
- An application under paragraph 319X of the Immigration Rules needs to show that there are “serious and compelling family or other considerations which make exclusion of the child undesirable.” In comparison, family reunion under the Dublin III Regulation is based on whether reunion is in the best interest of the child.

As a result of these barriers, in the experience of the British Red Cross and other organisations paragraph 319X of the Immigration Rules is often not a realistic option for children seeking to be reunited with their family members. The Dublin System provides a more accessible and successful safe and legal route.

Parliamentary reports on the importance of safe and legal routes

In their report *Brexit: Refugee Protection and Asylum Policy*¹, published in October 2019, the House of Lords EU Committee said that the “most significant implication” of leaving the EU’s asylum policy structures would be the “loss of a safe, legal route for the reunification of separated refugee families in Europe.” The Committee added that they “are particularly concerned about a potential reduction in the reunion rights of vulnerable unaccompanied children, who are able to be reunited with a broader range of family members under the Dublin System than under UK Immigration Rules.”

The Committee concluded “it is imperative that the right to reunion for refugee families should not be restricted after the UK leaves the EU” and recommended that **“all routes to family reunion available under the Dublin System should be maintained in the new legal framework for UK-EU asylum cooperation”**.

This was followed by the publication of the House of Commons Foreign Affairs Committee’s report² resulting from their inquiry *Finding a diplomatic route: European responses to irregular migration*. In their report, the Foreign Affairs Committee highlight the importance of providing safe and legal routes to protection, saying that policies that focus “exclusively on closing borders will drive migrants to take more dangerous routes, and push them into the hands of criminal gangs.” The Committee warned that “In the absence of robust and accessible legal routes for seeking asylum in the UK, those with a claim are left with little choice but to make dangerous journeys by land and sea.”

The two committees’ conclusions highlight the importance of not only protecting existing safe and legal routes, but also expanding existing ones. As the Foreign Affairs Committee say:

“We recommend that the Government expands the legal pathways to apply for asylum from outside Europe and works with EU partners to encourage them to do the same.”

The British Red Cross agrees, and make the following recommendations:

- **Family Reunion rights should not be negatively impacted as a result of the UK leaving the European Union.**

To achieve this, the UK Government should commit to:

- **Seeking to replace the family reunion elements of the Dublin III Regulation by prioritising the negotiation with the European Union, or with key Member**

¹ Brexit: Refugee Protection and Asylum Policy, House of Lords European Union Committee <https://publications.parliament.uk/pa/ld201719/ldselect/ldeucom/428/42802.htm>

² Responding to irregular migration: A diplomatic route, House of Commons Foreign Affairs Committee <https://publications.parliament.uk/pa/cm201919/cmselect/cmcaff/107/10702.htm>

States, of an agreement that allows individuals who have claimed asylum to be reunited with family members in the same way they are able to under the regulation. This should apply to adults and children.

- **Allowing children to join extended family members in the UK who have refugee or humanitarian protection status, including siblings, grandparents and aunts and uncles, when it is in the child's best interests, without any extra requirements.**
- **Allowing adults with refugee status or humanitarian protection in the UK to sponsor adopted children and de-facto adopted children.**

About the British Red Cross

- We are the biggest independent provider of support and advice to refugees and people seeking asylum in the UK. Every year we help over 32,000 people at all stages of the asylum process, half of whom experience destitution. The British Red Cross has destitution services in around 60 towns and cities across the UK, providing basic support to those not in receipt of any support from statutory services.
- We are part of the world's largest humanitarian network, the International Red Cross and Red Crescent Movement, which has 17 million volunteers across 191 countries. This gives us a unique ability to respond to humanitarian crises around the world – with a local presence responding in almost every country, combined with a global network able to mobilise and coordinate exceptional responses to emergencies.