



Briefing: Immigration and Social Security Co-ordination (EU Withdrawal) Bill Refugee Family Reunion

The Immigration and Social Security Co-ordination (EU Withdrawal) Bill is part of the Brexit legislative agenda which seeks to end freedom of movement between the UK and EU and EEA member states. It also provides a vital opportunity for Parliament to assess other elements of the UK immigration rules, including those related to refugee family reunion.

The global displacement crisis has seen a record 79.5 million people, including many children, forced from their homes fleeing persecution and conflict.¹ The right to family life is a well-established principle enshrined in the UN Convention on the Rights of the Child and is a critical factor in supporting refugees to successfully rebuild their lives, and to integrate in their new communities.

Indeed, at Committee Stage of the bill in the House of Commons, the Immigration Minister Kevin Foster stated: **“The Government are committed to the principle of family reunion and supporting vulnerable children. We recognise that families can become separated because of the nature of conflicts and persecution, and the speed and manner in which people are often forced to flee their country.”**²

Currently, the Dublin III Regulation sets out a process for determining which Dublin Member state³ is responsible for an asylum application made in the territory of one of those states. The Dublin System is the process of determining which Member State is responsible for assessing an asylum claim and the transfer of the asylum-seeker and claim to that Member State. This includes transfers for the purpose of family reunification. However, at the end of the Brexit transition period, this route for family reunion will potentially be lost.

Despite this, Government can take action now by amending the UK’s domestic Immigration Rules in line with our recommendations below without reliance on the Brexit negotiations. This would provide a legal and safe means for vulnerable individuals to join their families in the UK and mitigate some of the risks of leaving the Dublin System.

The Families Together Coalition⁴ believes the Government should:

- **Expand the criteria of who qualifies as a family member for the purposes of refugee family reunion** allowing adult refugees in the UK to sponsor their adult children and siblings who are under the age of 25; and their parents;
- **Give unaccompanied refugee children in the United Kingdom the right to sponsor their parents and siblings who are under the age of 25 to join them** under the refugee family reunion rules;
- **Reintroduce legal aid for all refugee family reunion cases.**

¹ Public source: <https://www.unhcr.org/5ee200e37.pdf>

² See [https://hansard.parliament.uk/commons/2020-06-18/debates/99fd2caf-a9ea-4445-91fb-f97329ad2eae/ImmigrationAndSocialSecurityCo-Ordination\(EUWithdrawal\)Bill\(EighthSitting\)](https://hansard.parliament.uk/commons/2020-06-18/debates/99fd2caf-a9ea-4445-91fb-f97329ad2eae/ImmigrationAndSocialSecurityCo-Ordination(EUWithdrawal)Bill(EighthSitting))

³ The Dublin Member states are the EU 27 plus the United Kingdom, Iceland, Luxembourg, Norway and Switzerland.

⁴ The Families Together coalition started in 2017 when a small group of organisations led by Amnesty International, British Red Cross, Oxfam Refugee Council and UNHCR joined forces. Through our in-depth research and public campaigning, we aim to change the restrictive UK rules on refugee family reunion. See <https://famiestogether.uk/> for more information.

What is refugee family reunion and who is eligible?

Eligibility for refugee family reunion is set out in the UK's immigration rules. Under these rules, adult refugees in the UK can be joined via family reunion by their spouse/partner and their dependent children under the age of 18.⁵

An alternative route available for family reunion for other child relatives, Immigration Rule 319X⁶, is fee-paying and requires income and accommodation conditions that are often insurmountable. Under 319X, the application has to show there are "serious and compelling family or other considerations which make exclusion of the child undesirable." This is a very high threshold and coupled with the additional restrictions means it is often not a realistic option for many separated children.

Those family members who have become separated but are not covered by the rules are left with the invidious choice of staying put, often in insecure and dangerous places, or embarking on treacherous, expensive, unregulated journeys.

Whilst the Immigration Rules set out UK domestic policy on the rights of refugees in the UK to sponsor family members from around the world to join them in the UK, the Dublin III Regulation is an EU agreement. Part of this agreement allows people seeking asylum in Europe to be transferred to the UK, and vice versa, on the basis of family unity and have their asylum claims considered in the UK, or elsewhere in Europe. This has become an increasingly important family reunion route, with more than 1,600 people being reunited in the UK through it since the start of 2018.

This route will end once the transition period is completed on 31 December 2020. While the Government has committed to seek an arrangement through the UK-EU negotiations that would maintain the family reunion elements of the Dublin system for separated children, the EU has not given an indication on their position.⁷ Without a mandate to negotiate on this issue there is no certainty that the UK's draft agreement on unaccompanied asylum-seeking children will be negotiated on or be successful.

Even if the UK negotiated a like-for-like system that maintains the family reunion elements of Dublin, this would only apply to people who had first travelled to Europe. It would also require the transferred person to make an asylum claim and only secure family unity pending a decision on that claim. The Families Together coalition supports others' calls on the Government to urgently renegotiate a system that retains the family reunion routes under the Dublin III Regulation for all families.

We also believe that this is a vital time to amend the UK's own refugee family reunion rules – the Government can act now and amend the UK Immigration Rules in line with our asks above. This would provide a legal and safe means for vulnerable individuals to join their families in the UK.

Separated refugee children should be able to sponsor their closest family members

Unlike adult refugees, child refugees who are in the UK have no right to be reunited with even their closest family under the Home Office's Immigration Rules. These children have been through the UK

⁵ The eligibility for refugee family reunion is set out in Part 11 of the Immigration Rules.

⁶ The eligibility for 319X is set out in Part 8 of the Immigration Rules.

⁷ The negotiating positions published by the EU's Taskforce for Relations with the United Kingdom (UKTF) are based on the Withdrawal Agreement and the accompanying Political Declaration, neither of which cover future asylum cooperation or family reunification.

asylum process and found to be in need of protection as refugees – the UK government has determined that it is not safe for them to return home. However, the current refugee family rules then deny these children the right to be joined by even their parents or siblings.

UNHCR, The UN Refugee Agency, UK immigration courts, parliamentarians and an increasing number of civil society organisations have raised concerns with this policy. Arguments have been made that granting refugee children the right to sponsor family members to come to the UK will lead to more children making dangerous journeys and being sent to the UK by their families overseas.⁸ However there is no evidence to support this claim.

Research⁹ from Amnesty International, the Refugee Council, Save the Children, and UNHCR¹⁰ details how this family reunion policy harms child refugees; the impact of family separation causes constant anxiety, fear for the safety of their families, and in some cases serious damage to their mental health. This policy leaves some of the most vulnerable children separated from their parents at a time when they need their families most. The children interviewed for the report ‘Without my Family’, shared memories of their departure and separation, their escapes from traumatic experiences in their home countries, and their reasons for leaving their homes behind. The interviews show how:

- These children’s journeys were made in urgent haste to escape danger.
- Their choices were limited, and their prime motivation was to search for safety.
- None of those interviewed had been aware of the family reunification policies of different countries when they were making their journeys.

Allowing refugee children to sponsor their immediate families would reduce the number of people making irregular journeys to reach the UK and would be a straightforward change which would have a transformational impact on the lives of a small number of child refugees.

Habib from Darfur, Sudan.

Habib was 15 years old when he was arrested by police. He had gone to the market with his friends but never made it home. He said he was imprisoned for a week, tortured and questioned about his father’s political associations. Habib said that when he was released, his mother told him he needed to leave Sudan quickly. He left the same day with an uncle, leaving behind younger siblings, aged nine and 11, and a disabled brother. Two of his older brothers were also later imprisoned and Habib explained how difficult it was to hear about this when he was so far away from his family, especially his mother. Habib reached Libya, where he said he experienced serious human rights abuses at the hands of smugglers. He described how he has constant flashbacks of the moment he saw smugglers killing a baby as its mother was giving birth. After hearing of his brothers’ imprisonment, Habib and his uncle decided to leave Libya for Europe, but they became separated. On the journey alone to Europe, Habib said, his boat capsized; he was rescued by Italian coastguards but said he saw many people drown. Since arriving in the UK he has started tracing his family in the hope that he could be reunited with them as a way of moving on from the horror of the last few years. He discovered that his mother and siblings are living in a refugee camp in Chad. Habib is unable to sponsor his mother and siblings to join him under the current Immigration Rules.

Parents should be able to sponsor their adult children under the age of 25

⁸ See paragraph 10.21 of the immigration white paper

⁹ “Without my Family” The Impact of Family Separation on Child Refugees in the UK. <https://www.refugeecouncil.org.uk/wp-content/uploads/2020/01/Without-my-family-report-AW-Jan2020-LoRes.pdf>

¹⁰ “A Refugee and Then...”: Participatory Assessment of the Reception and Early Integration of Unaccompanied Refugee Children in the UK, - <https://www.unhcr.org/uk/publications/legal/5d271c6a4/a-refugee-and-then.html>

“Destination Anywhere”: The profile and protection situation of unaccompanied and separated children and the circumstances which lead them to seek refuge in the UK -

<https://www.unhcr.org/uk/publications/legal/5daf2cef4/destination-anywhere.html>

The current restrictions mean that parents are not automatically able to bring their child who has turned 18, even if that child is still dependent on them and has not married or formed their own family. While the family reunion guidance does allow cases not covered by the rules to be granted in exceptional circumstances, in reality this rarely happens.”¹¹

Niru from Sri Lanka

Aged 18, she escaped to India with her husband, as they feared persecution. She had two children in India and was happy there until her husband was killed and she had to return to Sri Lanka. But in Sri Lanka, her life was in danger and she made the difficult decision to leave her children and come to the UK. She knew they were safer with her parents, but she missed them terribly and called them every chance she had. When she claimed asylum in 2015, it took several years for the Home Office to assess her claim and she was not recognised as a refugee until February 2020. By then, her daughter had turned 19. She is desperate to be reunited with both her children – who are ‘her heart and soul’. Like any mother, she loves them equally and both of them need her. But under the UK Immigration Rules she only has the right to reunite with her son, who is 16. This would mean leaving her daughter alone, without her brother. She hasn’t the heart to separate them but their absence is having a devastating effect on her mental health. In her own words, ‘I am empty. I feel like a dead body. I cannot survive without them’.

For families who are eligible, is family reunion a straightforward process?

In the experience of many families seeking to reunite, the process is not straightforward. For those refugees who do qualify for family reunion, the process is long and complicated. The report by the British Red Cross, ‘Not So Straightforward’¹², sets out many bureaucratic and practical barriers faced by families.

Complexities include cases where the family are unable to obtain the required ID or evidence due to security reasons and resort to expensive DNA tests or those involving adoption and de facto adoption. Such cases require legal advice in determining the eligibility of applications, support in gathering documentation, and reference to precedent and existing policy and guidance.

Since 2012, refugee family reunion cases have not been eligible for legal aid. Refugees must navigate complex legal processes and immigration rules whilst enduring prolonged separation from their families and the many harms which this can cause; including isolation, emotional distress and lack of confidence, as well as practical barriers to integration.

Exceptional Case Funding (ECF) has been available for family reunion cases. However, the rates applicable under ECF are far too low for the work involved. **The coalition believes that the UK government should reintroduce legal aid for refugee family reunion cases.**

¹¹ In 2017, only 81 applications for refugee family reunion to the Amann Decision Making Centre were referred by UKVI for consideration “outside the rules”. It is unknown how many of these cases were subsequently granted and data on grants outside the rules is not routinely published by the Government. See Independent Chief Inspector for Borders and Immigration (ICIBI), A re-inspection of the family reunion process, focusing on applications received at the Amman Entry Clearance Decision Making Centre, November 2017 – April 2018, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/737724/Final_Artwork_Reinspection_Family_Reunion_Amman.pdf

¹² British Red Cross, ‘Not So Straightforward: the need for qualified legal support in refugee family reunion’