

Families Together Coalition

Joint Committee on Human Rights

Legislative Scrutiny; Nationality and Borders Bill 2021 - 2022

About the Families Together Coalition

[Families Together](#) is a coalition of over 90 organisations who support the expansion of the UK's refugee family reunion rules, including a number who work directly with refugees in the UK to support their applications for family reunion. Alongside working with parliamentarians on this issue for many years, members of the coalition have been involved in a number of policy reports on the issue, including:

[Without my Family: The impact of family separation on child refugees in the UK](#)

[Destination Anywhere - The profile and protection situation of unaccompanied and separated children and the circumstances which lead them to seek refuge in the UK](#)

Does introducing a two-tier system of rights for refugees meet the UK's obligations under refugee law and human rights law?

One of the key measures in the Nationality and Borders Bill is to give powers to the Government to treat refugees differently, depending on their mode of arrival in the UK.

The Bill proposes that for someone who is recognised as being in need of international protection, the type of leave and the entitlements that come with it will depend on how that person entered the UK. This will include a restriction on their rights to refugee family reunion under the immigration rules. These proposals pose a huge threat to refugee protection in the UK including by completely undermining our current refugee family reunion provisions.

Clause 10 of the bill categorises refugees into two groups, Group 1 and Group 2. Group 1 refugees are those who arrive in the UK directly from a country or territory where their life or freedom was threatened, have presented themselves to the authorities without delay or, where a refugee has entered or is present in the United Kingdom unlawfully, they can show good cause for their unlawful entry or presence. There is no further detail provided on what a 'good cause' would be. Group 2 refugees are those who don't fit into the above category. This includes those arriving via irregular routes such as by lorry or by boat or those arriving after travelling through safe third countries."

Clause 10 gives the Secretary of State or an immigration officer the power to treat Group 1 and Group 2 refugees differently with regards to family reunion rights. It does not provide full details on what this restriction will look like in practice. However, it does state that this may include whether leave to enter or remain is given to members of the refugees family, the length of any period of limited leave to enter or remain, the requirements to be met in order to be given indefinite leave to remain and whether a no recourse to public funds condition is attached to the leave. These are wide powers and could severely restrict a refugee's ability to reunite with their family. The full details will only be set out in changes to the immigration rules, under the power provided in 10(8), which parliament has few, if any, opportunities to scrutinise and will be unable to amend.

Over the past five years, the top nationalities to be granted family reunion have been Eritreans, Sudanese, Iranians and Afghans.¹ Similarly, the top nationalities that have thought to have entered the UK through irregular routes in 2019 were from Eritrea, Sudan, Iran and Afghanistan², evidencing that the proposed changes would affect a large number of people, particularly women and children who make up 90% of all family reunion applicants. Any restriction or prolonging of family separation would be contrary to Article 10 of the United Nations Convention of the Rights of the Child (CRC) which clearly states it is in the best interest of the child to deal with applications for family reunification in a positive, humane and expeditious manner. We recommend an exemption is built into that clause to prevent any prevention of family reunion.

Further, clause 59 of the bill would give the Secretary of State the power to suspend, or delay the processing of entry clearance applications, which could include family reunion applications, by nationals of certain countries. This would be on the basis that the country is not cooperative in receiving their nationals who are subject to removal from the UK. If the Secretary of State were to implement such a delay or suspension to countries in which families are unable to apply family reunion, we are concerned that a family's right to family life may be infringed. We recommend an exemption is built into that clause to prevent any families from reuniting in the UK.

UNHCR has called these proposals 'discriminatory', stating that:

'...it remains clear that resettlement and other legal pathways cannot substitute for or absolve a State of its obligations towards persons seeking asylum at its borders, in its territory, or otherwise under its jurisdiction, including those who have arrived irregularly and spontaneously. This includes those arriving by boat. For the right to seek and enjoy asylum does not depend on the regularity of arrival of an asylum-seeker to a country. In reality, asylum-seekers are often forced to arrive at or enter a territory without prior authorisation.'

Any restriction on family reunion rights will result in family members being left with the heart-breaking choice to either stay permanently a part or risk their lives on treacherous journeys in order to reunite.

The introduction of reduced rights and entitlements for those found to be refugees but whom, in the opinion of the UK should have sought asylum in another country, runs contrary to the 1951 Convention, specifically the obligation on signatory states not to penalise refugees for unauthorised entry to the territory.

At the time of writing there has been no details provided on how the government will restrict refugee family reunion rights. We understand that the Government has indicated that any restriction will not undermine a refugee and their families' Article 8 ECHR rights as applications can be made based on these rights. From our experience these applications are difficult to prepare, require legal assistance and often end up at appeal. Without access to legal aid and with the introduction of temporary status and different rights including no recourse to public funds for Group 2 refugees, it is more than likely that they will not be able

¹ Home Office Asylum and Resettlement datasets

<https://www.gov.uk/government/statistical-data-sets/asylum-and-resettlement-datasets#family-reunion>

² Home Office response to Freedom of Information request dated 16 August 2021

to access this process. Procedural barriers to family reunifications and delay to family reunion which resulted in families remaining separated could lead to a breach of Article 8 rights.

Evidence from Australia highlights that barriers to family reunion for those with Temporary Protection Visas (TPV) led to an increase of women and children making dangerous journeys.

The report by the Kaldor centre³ states that:

'There is little evidence that introducing temporary protection measures have a deterrent effect. Indeed, after TPVs were introduced by the Howard Government, there was an increase in the number of women and children who arrived in Australia by boat. According to personal accounts, this was because the TPV regime precluded family reunion. The ineffectiveness of TPVs is the very reason that they were abolished by the Rudd Government.'

All refugees should have full and equal access to their rights regardless of how they enter the UK in accordance with the Refugee Convention which makes no allowance for such discrimination and in accordance with international human rights law which in principle prohibits such inequality. This includes full and equal access to family reunion rights.

Current refugee family reunion rules do not allow for unaccompanied children who are recognised as refugees in the UK to be reunited with any family members, unless they can show an exceptional reason why they should have this right (an impassable bar for most in practice).

In 2020, Refugee Council, Amnesty, and Save the Children established in the [Without my Family](#) report that this policy is a breach of the national and international law including the Convention on the Rights of the Child as well as being based on an absence of any evidence of being necessary or proportionate.

The report states that:

"The legal analysis carried out for this report shows that the UK's position puts it directly in breach of its legal obligations under both national and international law.

The family is a protected concept under international human rights law, international humanitarian law and international refugee law. The UK has an obligation under international law to ensure that all children subject to its jurisdiction have equal access to the rights enshrined in the UN Convention on the Rights of the Child (UNCRC) which contains some of the strongest provisions for the protection of a child's right to family unity and the corresponding States' obligations.

Determinations from UK Immigration Tribunals have also criticised the UK Government's stance on the rights of child refugees to family reunion.

The inconsistencies of the current UK situation are further exposed by Home Office guidance on reuniting families outside the UK. When the child is overseas, it advises that

³ <https://www.kaldorcentre.unsw.edu.au/>

family reunion must be seen as in the 'best interests of the child'. Yet in the UK, the same does not seem to apply."

Refugee Family Reunion is currently the most accessed safe route which allows family members to come safely to the UK to reunite with their sponsor. In the last five years, over 29,000 people have arrived in the UK through existing family reunion routes, 90% of whom were women and children.

Is the Bill otherwise compliant with the European Convention on Human Rights (ECHR), the UN Convention on the Rights of the Child, the European Convention Against Trafficking in Human Beings, and international refugee conventions that the UK has ratified?

Without further detail of the restriction on family reunion rights we are unable to comment on whether the Bill will in fact be compliant with Article 8 rights under ECHR or on the CRC. This brief is focused on family reunion and does not comment on the other elements within the Bill and their implication on human rights instruments and legislation.

Recommendation

We recommend that the Clause 10 of the Nationality and Borders Bill should be removed and at the very least there should not be any restrictions of the right to family reunion.