

Annex B – Home Office Response to the Lords EU Home Affairs Sub-Committee’s Report on Brexit: refugee protection and asylum policy

[The Committee] calls on the Government to offer public reassurances that it has no intention of curtailing the rights and protections afforded to refugees in the UK after Brexit. As part of these efforts, the Government should confirm arrangements to replace the EU Asylum, Migration and Integration Fund, which supports vital refugee resettlement and integration projects in the UK.

We support the Government’s ambition, as set out in the July 2018 White Paper on the future UK-EU relationship, to establish a new, strategic relationship with the EU on asylum and illegal migration after Brexit. But we are particularly concerned by the conspicuous lack of any reference to future UK-EU asylum cooperation in the November 2018 Political Declaration. Whether as part of any wider association agreement, or a specific cooperation arrangement, it is vital that refugees and asylum seekers are considered in any agreement on the future UK-EU relationship.

While the relationship of Norway with the CEAS provides a precedent for the participation of non-EU countries in the Dublin System, the UK is unlikely to be able to replicate these arrangements after Brexit, as unlike Norway it is not, and has no intention of becoming, part of the Schengen Area. Nonetheless, Dublin represents a more desirable and realistic foundation for the future UK-EU asylum relationship than attempting to create new returns arrangements from scratch. There is no evidence to support the Government’s suggestion that the UK as a third country could negotiate a “more effective and ambitious” agreement for the return or transfer of asylum seekers than the EU has been able to achieve between Member States.

We note the Government’s firm opposition to participating in any kind of responsibility sharing measures relating to asylum seekers, voluntary or mandatory. In the absence of any agreement on this issue at EU level, it is difficult to judge whether this will be an important factor in future UK-EU asylum cooperation. Nevertheless, if responsibility sharing does become an established feature of EU asylum policy, and if it is framed in a voluntary and non-binding way, we believe that it would be in the UK’s interest to participate in such measures.

Any new bilateral arrangements between the UK and individual Member States should augment—not seek to provide an alternative to—a wider UK-EU agreement on future asylum cooperation.

This Government will continue to provide protection to refugees in the UK, in accordance with the 1951 Refugee Convention, and continue to support refugee resettlement and integration in the UK now that we have left the EU.

The UK has been clear that we are seeking a close partnership with the EU on matters of asylum and illegal migration, as this is in the shared interests of both parties. This issue is of utmost importance to the UK and is a core part of the UK’s whole of route approach to migration.

That is why the Prime Minister made clear in his written statement to Parliament on 3 February that the UK is ready to discuss cooperation on asylum, including family reunion, and illegal migration. It is our view that there is real mutual interest in a close future partnership, underpinned by the shared objectives of deterring abuse of our asylum systems and reducing secondary movements while ensuring safe and legal passage for the most vulnerable.

The UK does not intend for the future relationship with the EU to include a mechanism that will allow for the redistribution of asylum seekers. The Government believes that a redistribution mechanism may further increase flows to Europe, continuing the risk of people making dangerous journeys. For these reasons, the UK is unwilling to participate in a voluntary relocation programme, and as such, we would not expect the future EU-UK relationship to be underpinned by such a proposal.

Now that the UK has left the EU, at the end of the transition period the UK will also cease to be party to the Dublin III Regulation. The Government does not intend to replicate Dublin; instead, the Government is seeking an ambitious new partnership on asylum and illegal migration.

The Government has proposed that the EU and UK enter into a comprehensive readmissions agreement. This would allow for the return of EU, UK and third-country nationals who have entered the UK directly from an EU country, and vice versa. The UK's preference is to agree a readmissions agreement with the EU underpinned by continued access to Eurodac, or a similar biometric system. However, this is a two-way negotiation and so the outcome will also depend on EU cooperation. The UK is keen to improve its relationships with near neighbours specifically and so in the absence of an EU wide agreement, we would seek to negotiate bilateral agreements with key partners.

The Government has also been clear that it remains committed to seeking a new agreement with the EU for the family reunion of unaccompanied asylum-seeking children in the EU with family members in the UK, where in the child's best interests, and for children in the UK with family in the EU in equivalent circumstances, once the UK ceases participating in the Dublin Regulation at the end of the transition period.

In a 'no deal' Brexit scenario, the UK's sudden departure from the Dublin System could have a significant humanitarian impact on separated refugee families, leaving them in legal limbo and at risk of falling into gaps in the system.

We are not satisfied that the Immigration, Nationality and Asylum (EU Exit) Regulations 2019 provide sufficient protection against disruption to family reunion routes.

We urge the UK and the EU to honour their commitment to the right of refugee family reunion by negotiating an interim agreement to maintain this right in a 'no deal' scenario. A temporary extension of current arrangements would be the most feasible option.

Future UK-EU asylum cooperation should take the Dublin System as its starting point and include a framework for the speedy resolution of refugee family reunion cases and a returns mechanism, ideally based on continued UK access to the Eurodac database. It should have at its heart a shared agreement on, and commitment to uphold, minimum standards for refugee protection, asylum procedures, qualification, and reception conditions. Additional agreements on data protection and the respective jurisdiction of EU and UK courts will be needed to facilitate these arrangements.

We believe that it is imperative that the right to reunion for refugee families should not be restricted after the UK leaves the EU. 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.

We support the Families Together coalition's campaign to expand UK refugee family reunion rules. These demands reflect the conclusions of our 2016 report on unaccompanied migrant children in the UK, which found no evidence to support the Government's belief that allowing children to sponsor their parents would encourage families to send children to Europe alone in order to act as an 'anchor' for other family members.

Expanding the definition of family members eligible for reunion to include adult children would help to address the situation that some refugees in the UK find themselves in, where bringing their spouse and or children to join them would mean abandoning their 18- or 19-year-old in a dangerous country of origin, with no other family to protect them.

The UK provides safe and legal routes to bring families of refugees together through its refugee family reunion policy and under the family provisions, known as Appendix FM, of the Immigration Rules. These routes are not be affected by the UK's exit from the EU.

We recognise that families can become separated because of the nature of conflict and persecution, and the speed and manner in which people are often forced to flee their country. The Government's family reunion policy allows those granted refugee status or humanitarian protection in the UK to sponsor pre-flight, immediate family members to join them here.

Under the refugee family reunion Immigration Rules, those granted protection in the UK can sponsor their partner and children under 18 to join them here, if they formed part of the family unit before the sponsor fled their country. The Home Office has granted almost 29,000 family reunion visas under the refugee family reunion Immigration Rules over the last five years, more than half of which were issued to children.

Where an application fails under the Immigration Rules, we consider whether there are exceptional circumstances or compassionate reasons to justify granting leave to enter or remain in the UK, outside of the Immigration Rules. We have published guidance which aims to provide advice on the types of cases that may benefit from this discretion – including young adult sons or daughters who are dependent on family here and living in dangerous situations.

The UK is also committed to continuing to offer support to vulnerable children affected by the migration crisis and to the principle of family unity. It must be noted that conducting the necessary welfare and safeguarding checks to ensure a child's best interests are met takes time, working with appropriate international partners and local authorities. It is only right that sufficient time is dedicated to these important steps.

Furthermore, Appendix FM provides a route for family members wishing to enter or remain in the UK on the basis of their relationship with a family member who is a British citizen or settled in the UK, and those who are post-flight family members of a person granted protection in the UK. This includes cases where there are exceptional circumstances or compelling compassionate grounds which warrant a grant of leave under the Rules.

Government policy is not designed to keep child refugees apart from their parents, but in considering any policy we must think carefully about the wider impact to avoid putting more people unnecessarily into harm's way.

We are concerned that allowing refugee children in the UK to sponsor parents would create further incentives for more children to be encouraged, or even forced, to leave their family and risk hazardous journeys to the UK to sponsor relatives. This plays into the hands of criminal gangs who exploit vulnerable people and goes against our safeguarding responsibilities.

The Government also remains committed to seeking a new reciprocal agreement with the EU for unaccompanied asylum-seeking children in the EU to join family members in the UK, and vice versa, where it is in their best interests, once the UK ceases to participate in the Dublin III Regulation. The Government's policy has not changed, and this remains a negotiating objective. Section 37 of the EU (Withdrawal Agreement) Act 2020 reaffirms this commitment, whilst amending section 17 of the EU (Withdrawal) Act 2018 to remove the statutory obligation to seek to negotiate, thereby restoring the traditional division of competencies between Government and Parliament. Section 17 as amended instead requires the Government to lay a statement to Parliament on its policy in this area by 22 March 2020. The Home Secretary has already written to the European Commission on 22 October 2019 inviting them to begin discussions on such an agreement.

Meanwhile, the UK will continue to participate in the Dublin III Regulation throughout the transition period, including the family reunion provisions. Under the Immigration, Nationality and Asylum (EU Exit) Regulations 2019 there is a 'saving' provision, such that any Dublin family reunion cases which have entered the system prior to the end of the transition period will continue to be processed beyond that date.

Although they are not formally EU-dependent, the agreements underpinning bilateral border cooperation have undoubtedly been easier to sustain under the shared umbrella of EU membership.

A disruptive 'no deal' Brexit could place a particular strain on these relationships. There would also be significant disruption to cooperation facilitated by EU security tools and measures, as we have noted in previous reports.

The Government must make every effort to maintain effective bilateral border cooperation after the UK leaves the EU, especially a 'no deal' scenario, when good will towards the UK is likely to be in short supply.

The UK Government must make every effort to preserve the existing cooperation on border and asylum issues that takes place on a bilateral basis with individual EU Member States, notably France and Belgium.

We see little scope for extending the UK-France relationship beyond what is already set out in the Le Touquet and Sandhurst agreements, although we recommend that the latter should be amended to preserve enhanced cooperation on family reunion if and when the UK leaves the Dublin System. The UK and France should also give priority to humanitarian protection for asylum seekers, in addition to security measures.

We also urge the Government to seek to further develop its bilateral border cooperation with Belgium, especially in light of the increasing numbers of asylum seekers in Belgian ports and coastal areas. This cooperation should include a reasonable and proportionate financial contribution from the UK to the cost of Belgian border controls, including efforts by the Belgian police and border authorities to intercept so-called 'transmigrants' seeking to travel to the UK.

Juxtaposed border controls continue to provide secure borders and are a key enabler of border fluidity on key routes between France and Belgium and the UK. Our recent work with our French, Belgian and Dutch colleagues to extend this model to the new Eurostar services running to and from Amsterdam and Rotterdam have taken place against the backdrop of the UK's exit from the EU. Our international partners have remained committed to this model of border control, and we have had positive and productive engagement with them to secure the bilateral and multilateral agreements required. We will maintain this in the coming months to deliver this extension, as well as into the future.

The UK has strong, historic bilateral relationships with those EU Member States at our nearest borders, and in some cases shared border, including France and Belgium. To date, there has been significant cooperation and investment to strengthen our near border against illegal migration. Since 2014, the UK has invested over £200 million in border security and related joint action to tackle illegal migration, including under the 2018 Sandhurst Treaty.

This year we have enhanced our shared response to small boat crossings through an enhanced joint action plan with France and we have also stepped up cooperation with Belgium, in particular to strengthen port security in Zeebrugge.

Over the last 12 months, the UK has increased cooperation with the Belgian Government on tackling illegal migration in response to the rise in 'transit migration' at Zeebrugge port. This increased pressure at Zeebrugge partly reflects displacement from northern France following the implementation of increased security measures at the shared border under the UK-France Sandhurst Treaty.

Following the tragic incident in Essex on 23 October, where 39 people died in a refrigerated lorry which travelled to the UK through the port of Zeebrugge, the UK and Belgium agreed to enhance our existing cooperation and a programme of joint activity is being developed at pace.

A number of official and operational level meetings have taken place and we have agreed concrete areas of enhanced cooperation, including intelligence sharing, tackling organised crime and strategic communications, but prioritising immediate action in the port of Zeebrugge to improve border security.

Home Office officials also continue to work closely with Member States on the operation of the Dublin III Regulation, and with France, Greece, and Italy on the referral and transfer of unaccompanied asylum-seeking children to the UK under section 67 of the Immigration Act 2016 ('the Dubs Amendment').

Furthermore, as outlined above, the Government has also been clear that it remains committed to seeking an agreement with the EU for the family reunion of unaccompanied asylum-seeking children in the EU with family members in the UK, where in the child's best interests, and for children in the UK with family in the EU in equivalent circumstances.

It is clear that tackling the challenges of asylum and illegal migration will continue to be a priority on both sides of the border for the UK and our bilateral partners. We are clear that it remains in our firm mutual interests to continue working together to protect life, offer protection to those who need it and maintain the security of our border.

In addition to the above, the UK continues to work closely with our bilateral partners to identify and prepare for any future pressures as part of our ongoing cooperation. This includes at the operational level, where we are sharing operational details to reduce friction and maintain flow at ports following the UK's departure from the EU.

We continue to be bound by our obligations under the Refugee Convention and the European Convention of Human Rights regardless of our exit from the EU.

On the external dimension of UK asylum policy, human rights considerations must be at the heart of any future agreements with third countries on readmission or cooperation to tackle the root causes of migration. We recommend that all such agreements should be subject to formal human rights assessments, which satisfy widely held international standards.

The UK continues to be bound by our obligations under the Refugee Convention and the European Convention of Human Rights following our exit from the EU.

[We are] disappointed that the Government has failed to implement the recommendation of our 2016 report to establish a guardianship service in England and Wales for all unaccompanied migrant children, to oversee their participation in the asylum process and identify their best interests. We now repeat that recommendation.

The administration of the Dubs scheme is a worrying example of inefficiency in the UK asylum system. The Government was slow to get the scheme off the ground and can only confirm that 220 children have been transferred through it since 2016. Vague assertions that continuous progress is being made towards the commitment to resettle 480 children are unacceptable.

The Government must provide regular updates on the number of unaccompanied children brought to the UK through the Dubs scheme, and how it is working with local authorities to provide resettlement places.

The Home Office takes its responsibility for the welfare of unaccompanied asylum-seeking children (UASC) very seriously. There are already comprehensive statutory and policy safeguards and arrangements in place for supporting children through the asylum process and ensuring that their best interests are a primary consideration in every decision taken in respect of them.

All UASC are looked after by local authorities who have a statutory duty to ensure that they safeguard and promote their welfare. Under these arrangements, UASC are provided with access to support and services in line other looked after children.

The children will be allocated a social worker who will assess their needs and draw up a care plan which sets out how the authority intends to respond to the full range of the child's needs, including their immigration status. In addition to this support from local authorities, legal advice is available to UASC from legal representatives.

In England, UASC are referred to the Refugee Council's Children's Advice Project, which provides independent advice and assistance to help the child in their interaction with the Home Office and other central and local government agencies. We believe these comprehensive arrangements already provide unaccompanied children with the necessary specialist advice and support that they need.

In acknowledgment of the likely increased support needs of trafficked children, in July 2018, the Government reaffirmed its commitment to the full national roll out of Independent Child Trafficking Guardians (ICTGs) across England and Wales. ICTGs are an additional source of advice and support for all trafficked children, irrespective of nationality, and somebody who can advocate on their behalf. One-third of all local authorities in England and Wales are now covered by ICTG provision.

Section 67 of the Immigration Act 2016 is a commitment to relocate unaccompanied children from Europe to the UK. It is one of a number of schemes that offer a safe and legal route to the UK for the most vulnerable children. Over 220 children were transferred to the UK under section 67 of the Immigration Act 2016 when the Calais camp was cleared in late 2016. Since then we have been making further progress with the three participating States – France, Greece, and Italy – to refer and transfer more eligible children to move closer to the commitment to transfer 480 children. However, the Government has been clear that we will not provide a running commentary on numbers and will publish further details once transfers are complete.

Section 67 should not be seen in isolation. The continued relocation of eligible children to the UK is dependent on the availability of appropriate local authority care placements. In recent years, the UK has received a significant number of asylum claims from unaccompanied children. In the year ending December 2019, the UK received 3,651 UASC – a 19% increase on the previous year. In 2018, the UK received 15% of all UASC claims lodged in EU countries. This follows previous years which have seen similarly high numbers of unaccompanied children arriving in the UK – 3,254 in 2015, 3,290 in 2016, and 2,401 in 2017.

The Home Office continues to work closely with regional Strategic Migration Partnerships and local authorities throughout the UK to secure care placements for children transferred to the UK under Section 67. The Government is extremely grateful for the continued goodwill and co-operation of all local authorities who look after UASC, including those arriving spontaneously as well as those who transfer under section 67.

The Home Office should redouble its efforts to improve the speed and efficiency of its handling of asylum cases. This is likely to require the investment of additional financial and human resources in UK Visas and Immigration, and further training for staff involved in considering asylum applications.

We note concerns about deficiencies in the UK asylum system in relation to the care and protection of people seeking asylum on sexual orientation and gender identity (SOGI) grounds. Future UK asylum policy should ensure adequate consideration of the particular needs and vulnerabilities of SOGI applicants.

The Home Office is committed to ensuring that asylum claims are considered without unnecessary delay, to ensure that individuals who need protection are granted asylum as soon as possible and can start to integrate and rebuild their lives. That is why, over the last 15 months we have increased the number of decision makers from c.350 to over c.630; including reassigning staff into decision making roles.

We are starting to see the benefit of increased outputs as new decision makers undergo training and mentoring and established decision makers support their new colleagues. We have also committed to enhancing the training provided to decision-makers to enhance their competence and literacy when dealing with vulnerable groups.

Work continues to review and revise our Foundation Training Programme using customer insight and stakeholder experience and expertise, to ensure it provides the best support for decision makers and the wider business. We remain confident that our approach to considering sexual orientation issues in asylum claims ensures that claims are properly considered, that decisions are sound and that, when protection is granted, it is granted to those who genuinely need it.

We are exploring several initiatives to improve the asylum application process. We have put in place a number of process improvements and are developing a more structured transformation programme aimed at greater automation, simplification and standardisation across the asylum decision-making teams. This includes the replacement of the existing immigration casework database.

We welcome the establishment of a single, global refugee resettlement programme to consolidate the VPRS, VCRS, and Gateway schemes when they come to an end in 2020. This should help to improve consistency in people's experiences of refugee resettlement, but will not fully address the two-tier system of support for refugees that currently exists in the UK.

The new UK resettlement programme should build on best practice from the successful VPRS and VCRS schemes and be underpinned by a long-term funding commitment to enable forward planning. It will be essential for the Government to work closely with local authorities, charities and community groups in the design and delivery of this programme. The Government should also strive to ensure a better distribution of refugees across the UK by encouraging and supporting the participation of local authorities new to refugee resettlement in the programme, and by facilitating the exchange of information and lessons learned between local authorities.

We also urge the Government to reconsider its modest aim to resettle 5,000 refugees in the first year of the new scheme. With the experience and infrastructure from delivering the VPRS already in place—and in the context of record numbers of forcibly displaced people worldwide—the Government should be more ambitious in its resettlement target.

We also commend the Norwegian approach of disbursing a fixed sum of money to municipalities to incentivise them to support refugees to integrate successfully and become financially independent as quickly as possible. A more generous integration support package—along the lines of Norway's refugee introduction programme—would represent a significant upfront cost but could reduce the amount of time refugees in the UK are dependent on welfare support, generating savings in the longer term.

We urge the Government to follow the example of Norway in offering the same package of financial and other integration support to all recognised refugees in the UK, regardless of whether they arrived through a resettlement programme or by their own efforts as an asylum seeker.

Refugee resettlement is a specific humanitarian effort, based on need, which aims to provide sanctuary to the world's most vulnerable people and the associated level of funding and integration support reflects this.

The Government has committed to a new global UK Resettlement Scheme (UKRS) which will begin in 2020, once we have met our commitment to resettle 20,000 vulnerable refugees through the Vulnerable Persons Resettlement Scheme (VPRS). UKRS will aim to resettle in the region of 5,000 refugees in its first year of operation. It is right that we continue to offer safe and legal routes to the UK for vulnerable refugees, for whom resettlement is the only durable solution. The number of refugees we resettle in the UK each year depends on a variety of factors including local authorities' capacity for supporting refugees.

In developing the framework for the new scheme, we consulted with key partners and stakeholders, as well as learning the lessons from the current resettlement schemes. We are retaining the key strengths of our existing schemes: our focus on vulnerability and need; our partnership with UNHCR; and working with local authorities to provide an effective package of support for those being resettled.

Under the VPRS, the majority of local authorities, over 300, have participated in resettlement, a level of participation we hope to build on for the new UKRS. The Government will continue to support the exchange of information and lessons learned between local authorities under the UKRS.

The Government published the Integrated Communities Action plan in February 2019. In the action plan we have committed to work with civil society and others to increase integration support for all refugees in the UK. Our focus is on supporting refugees with English language, employment and entrepreneurship, and wellbeing and social capital.

All refugees have immediate access to the labour market and mainstream benefits and services that support their integration. We are working across Government to ensure services meet the needs of refugees.

Resettlement is only one aspect of our humanitarian response. The UKRS will continue to complement to our significant humanitarian aid programme and diplomatic efforts to end conflicts. Globally, resettlement remains an important solution for refugees and we urge other states to follow the UK's lead and step up their resettlement offer.