

Refugee Family Reunion after Brexit:

British Red Cross policy briefing on what Brexit will mean for separated families seeking to reunite in the UK

Since 2014, the Dublin System has become an increasingly important route for families across Europe who have been separated by war and persecution to be reunited. In 2018, over 1,000 people were reunited in the UK through the system. If the UK leaves the European Union without a deal in place on 31 October 2019, it will also leave the Dublin System on that date, potentially leaving separated families without a safe, legal route to reunion and increasing the risk that people will resort to more dangerous alternatives. The impacts of the UK leaving the Dublin System can be mitigated, however, before 31 October by amending the UK's domestic legislation and proactively working with other Governments who are part of the system.

There are two main routes that refugee and asylum-seeking families can currently 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.

While an average of around 5,200 people are reunited under the UK's domestic legislation, over recent years 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 System—by 2018 this had increased to 1,028.

When the UK leaves the European Union, it will no longer be part of the Dublin System. If the UK leaves with a deal and there is a transition period, then it is expected the UK would remain part of the Dublin System until the end of that period. During that time, under the European Union (Withdrawal) Act 2018 the Government must seek to negotiate an agreement that would retain the family reunion elements of the Dublin System for separated children.

However, in a situation where the UK leaves without a deal, the UK would leave the Dublin System at 11pm on 31 October and it is unlikely that an alternative agreement would in place.

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.

This would potentially leave family members in Europe, including separated children, without a safe and legal way to reach their loved ones here. In order to ensure that families can continue to be reunited, even if the UK leaves the EU without a deal, the Government should amend the domestic immigration rules and work with other Dublin States.

British Red Cross recommends that:

Before the UK leaves the European Union:

- The Home Office should amend the UK's immigration rules to better mirror the family reunion elements of the Dublin System.
- The Home Office should work with other States to ensure outstanding family reunion transfers are submitted to the UK before 'exit day'

In the longer term:

- The UK Government should seek to negotiate an agreement with Dublin Member States to retain the family reunion rights for all separated families.

Family Reunion after Brexit

Increased importance of the Dublin System

- Since 2014, according to the Home Office statistics an average of around 5,200 family visas have been issued each year under the UK's domestic refugee family reunion rules. Around 90% of family reunion visas are issued to women and/or children.
- During that time, the number of family members being reunited through the Dublin System has grown significantly.
- Statistics published in February 2019 show in 2014 31 people were reunited with family members through the Dublin System—**by 2018 this had increased to 1028.**

Breakdown of families being reunited through the Dublin System

- 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.
- The largest group being reunited in the UK through the Dublin System were those coming through Article 9 of the Dublin III Regulation. In 2018, 826 people were reunited with relatives under Article 9.
- Article 9 allows those who have applied for asylum in one Dublin Member State to be reunited with a family member who has been recognised as a refugee by another Member State.
- The majority of transfers to the UK were from Greece—918 transfers for family reunion in 2018 were from Greece to the UK, compared to 35 from France and 20 from Italy.

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

Immigration, Nationality and Asylum (EU Exit) Regulations 2019

- The Immigration, Nationality and Asylum (EU Exit) Regulations 2019 amend a wide range of pieces of domestic legislation to ensure they function after the UK leaves the European Union. Regulation 55 of those regulations states that the legislation governing the Dublin System will be revoked when the UK leaves the European Union.
- When the regulations come into force depends on whether the UK leaves the European with or without a withdrawal agreement. If there is a deal, then the UK will remain part of the Dublin System until the end of the transition period. If there is not a deal, then the UK leaves the Dublin System on 'exit day', currently 11pm on 31 October 2019.
- Schedule 1 of the regulations contains a provision that allows any transfer request that was made to the UK before 'exit day' to continue to be considered. As individuals cannot make transfer requests themselves but are reliant on the country they have claimed asylum in doing so, there may be people with family members in the UK who have claimed asylum prior to 'exit day' who cannot be transferred as the request was not made in time.

Gaps between the Dublin System and the UK's domestic legislation

- While the UK's domestic legislation contains routes for refugee families to be reunited, there are significant circumstances where the Dublin III Regulation allows families to reunite that are not replicated in domestic legislation.
- Key gaps include **family members joining refugees in the UK**. Article 9 of the Dublin III Regulation is similar to Part 11 of the UK's immigration rules, but is more generous in a number of key ways:
 - Lower evidential requirements to

prove family link

- Allows children with refugee status in the UK to be joined by their parents
 - Doesn't require the family relationship to have been formed 'pre-flight' so allows for relationships that developed after the family fled their home
 - Doesn't require transport costs to be paid
- For example, the British Red Cross has worked with Kuwaiti Bidoon families who would be eligible to be reunited under the UK's domestic rules but, due to their lack of status within Kuwait, are unable to provide the necessary documentation. These families have been forced to travel to Greece in order to make an application under the Dublin Regulation to be reunited under Article 9.
 - Routes for **separated children who have claimed asylum in an EU country** are more easily accessible under the Dublin System than under the similar part of the immigration rules, paragraph 319X. This includes:
 - No application fee under the Dublin System, compared to £388 through the immigration rules
 - Stricter requirements for relatives to show they can financially support and accommodate any child without recourse to public funds under 319X
 - Under 319X, application has to show there are "serious and compelling family or other considerations which make exclusion of the child undesirable."
 - The additional restrictions of paragraph 319X means it is often not a realistic option for many separated children.
 - A full comparison of the Dublin System and the UK's domestic legislation can be found in Annex 1.

Current UK Government Commitments

- The Government is committed, through Section 17 of the Withdrawal Act 2018, to seek to negotiate the retention of the provisions within the Dublin III Regulation that allow separated children who have applied for asylum to join family members

residing in other Dublin Member States.

- The commitment was restated in the Immigration White Paper published in December 2018. However, the commitment only covers separated children and not other refugees and people seeking asylum who would currently be able to be reunited through the Dublin System.

The British Red Cross recommends that the ability for families to be reunited in the UK under the Dublin III Regulation should be protected when the UK leaves the European Union.

In the short-term this can be achieved through expanding the current rules that allow refugees in the UK to be joined by family members (which can be done without primary legislation) and by working with other Dublin Member States to ensure transfer requests are expedited ahead of exit day.

Specifically, ahead of a potential no-deal, the Home Office should:

Amend the UK's immigration rules to:

- allow children with refugee or humanitarian protection status to sponsor their parents or other adult responsible for their care
- allow children to join extended family members in the UK, including siblings, grandparents and aunts and uncles who have refugee or humanitarian protection status, when it is in the child's best interest without any extra requirements
- allow adults with refugee status or humanitarian protection in the UK to sponsor adopted children and de-facto adopted children
- allow British Citizens who previously held refugee status or humanitarian protection in the UK to sponsor their children, grandchildren, nieces and nephews, where it is in the child's best interest
- add a discretionary provision to allow for family reunion 'in order to bring together any family relations, on humanitarian grounds based in particular on family or cultural considerations' and set out the process for such an application, rather than relying on an 'outside of the Rules' discretion for which there is no clear process

Work with other Dublin Member states to:

- Ensure that Dublin Units in other Member States expedite take charge requests to the UK prior to the UK leaving the Dublin system
- Provide information to people seeking asylum who may have family members in the UK about the options available to them
- In cases where individuals who have claimed asylum in other Member States have family members in the UK prior to 31 October 2019, allow take charge requests to continue to be submitted after exit day

In the longer-term, the UK Government should seek to replace the family reunion elements of the Dublin III Regulation by:

- prioritising the negotiation with the European Union, or with key Member 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.*

ANNEX 1 – Comparison of family reunion rights under the Dublin III Regulation and under UK domestic legislation

The table below sets out the family reunion rights for refugee and asylum-seeking families under the Dublin III Regulation and the UK’s domestic legislation. In the table, “applicant” refers to the family members outside of the UK and “sponsor” refers to the relative in the UK. Please note that in some cases where there is not a family reunion right within the Immigration Rules people may be able to benefit from discretionary provisions.

Applicants	Sponsors					
Under-18 year old unmarried child (who was part of the family unit before the parent fled) to join...	Parent in UK who has refugee or humanitarian status		Asylum-seeker parent in UK		British parent in UK	
	Dublin III Regulation	UK RFR Immigration Rules	Dublin III Regulation	UK RFR Immigration Rules	Dublin III Regulation	UK RFR Immigration Rules
	Yes – Article 9 Article 8.1 for unaccompanied child	Yes– Part 11 (Paras. 352D and 352FG)	Yes – Article 10 for joining a parent who is an asylum-seeker Article 8.1 for unaccompanied child	No	Yes – Article 8.1 for unaccompanied child	No
Under-18 year old unmarried child (who was not part of the “pre-flight” family unit) to join...	Yes – Article 9	No	No	No	No	No
Over-18 year old child to join...	No. But Article 16 gives this right in certain cases of dependency	No	No	No	No. But Article 16 gives this right in certain cases of dependency	No
Applicants	Sponsors					
Parent to join...	(Unmarried) Under-18 year-old child in UK who has refugee or humanitarian status			(Unmarried) Under-18-year-old asylum-seeking child in UK		
	Dublin III Regulation		UK RFR Immigration Rules	Dublin III Regulation		UK RFR Immigration Rules
	Yes – Article 9 – regardless of whether the family was previously formed in the country of origin		No	Yes - Article 10 for joining a child who is an asylum-seeker		No
Parent to join...	Over-18 year old child in UK					
	Dublin III Regulation			UK RFR Immigration Rules		

	No. But Article 16 gives this right in certain cases of dependency	No
Sibling to join...	Sibling in UK	
	Dublin III Regulation	UK RFR Immigration Rules
	Yes – for unaccompanied child - Article 8.1 No – for most adult siblings and accompanied children. But Article 16 gives this right in certain cases of dependency	No

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If you have any questions about any of the information contained in this document or would like to discuss further please contact Jon Featonby, Advocacy and Policy Manager (Refugees and Asylum), by email JFeatonby@redcross.org.uk or by phone **0207 877 7364**.

About the British Red Cross

The British Red Cross is the biggest independent provider of support and advice to refugees and people seeking asylum in the UK. In 2017 we worked with over 30,000 people in 58 towns and cities. Around half of those people we supported faced destitution, and around one fifth of those had some kind of status.

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