



# KEEPING FAMILIES TOGETHER

## RETAINING CHILDREN'S RIGHTS TO FAMILY REUNION THROUGH BREXIT

“[The UN Committee on the Rights of the Child] recommends that the State Party review its policy in order to facilitate family reunion for unaccompanied and separated children within and outside the state party, including through implementation of the EU Dublin III regulation”<sup>1</sup>

### SUMMARY

Under current EU law, an unaccompanied child can apply to be reunited with their close family<sup>2</sup> in any other state that is a signatory of the Dublin Convention, also known as the Dublin III Regulation.

However, this route could soon be closed as we exit the European Union, and other EU countries adopt the Dublin IV Regulation without the UK. Without this route, more children will be forced into the hands of traffickers and smugglers for the entirety of their journey.

Currently, there is a disparity between the UK's refugee family reunion rules and the Dublin III Regulation. The UK's own rules cover only children and their parents<sup>3</sup>, whereas Dublin III allows children to be reunited with their adult siblings, grandparents, aunts, and uncles, as well as parents. This disparity currently leaves children with little choice but to make the dangerous journey to Europe in order to access their right to family reunion under Dublin III. Expanding the Immigration Rules would remove the requirement to travel to Europe and provide safe and legal routes for children.

Brexit gives the UK an opportunity to change its own refugee family reunion rules, so that children living in conflict-affected regions are reunited with their families safely and legally, rather than having to risk their lives on dangerous journeys to Europe.

The process of leaving the EU offers an opportunity to ensure clarity in our rules, and demonstrate that the UK remains committed to helping unaccompanied children reunite with their close family in the UK. It is imperative that as the UK reforms its immigration rules it broadens the scope of its family reunion rules – so that these are in line with European ones – allowing children to be reunited with their close family members, wherever they are.

Specifically, the UK should amend its Immigration Rules on refugee family reunion to allow extended family members such as adult siblings, grandparents, aunts and uncles who have refugee or humanitarian status to sponsor children in their family to join them in the UK, when it is in the child's best interests. This would tackle one of the key shortfalls that currently pushes children into the arms of smugglers and traffickers.

### CASE STUDY: NABIL, FROM SYRIA

17-year-old Nabil found himself alone in Lebanon after fleeing his bombed home in Syria. Several of his family had been killed. Those who were alive were scattered far and wide, including his older brother who was living in safety in Scotland. Boarding a plane to join his brother was not an option for Nabil because siblings are not eligible for family reunion under the UK Immigration Rules. Instead, he made his way alone by land and sea to France, and nearly drowned when his boat capsized in the Aegean Sea. In France, he endured six months in the 'Jungle' in Calais, was held in detention and risked his life repeatedly in desperate attempts to reach his brother by boarding lorries to the UK. After receiving legal advice, Nabil was finally allowed to come to the UK under the Dublin III Regulation, and is now in Scotland waiting for a decision on his asylum application.

## WHAT RISKS DO THESE CHILDREN FACE WITHOUT SAFE AND LEGAL ROUTES?

The mass movement of refugees in 2015 and 2016 have shone a light on the dangers children face when they are forced to flee. In 2016, more than 25,800 unaccompanied children put their lives in the hands of smugglers to reach Italy. Nearly one third of arrivals are children and more than 90 per cent of all children arriving in Italy are unaccompanied and separated children. Last year, 4,579 people died making the sea crossing to Italy and it is estimated that at least 700 children were among the dead. It is the among the deadliest migration routes in the world for children.<sup>4</sup>

Children have been forced to make dangerous journeys when the Dublin III family reunion system has not operated quickly enough. Only 3 children were transferred from Italy to the UK in 2016, with most waiting over a year in the Italian asylum system – but over 550 were transferred from Calais at the time of the camp demolition. As we saw in France, where there is political will on both sides, the Dublin III family reunion system can work effectively and reduce the need for children to rely on smugglers and traffickers to reach their destination.

One of the biggest struggles with Dublin III is the reliance on other EU countries to process asylum claims and request a transfer – often a very lengthy process. Under the UK Immigration Rules, refugee family reunion transfers are processed by UK embassies and consulates meaning we could take back control of this process and ensure it works at a speed in the best interests of children.

## WHAT RIGHTS DO CHILDREN HAVE TO FAMILY REUNION IN THE UK WITHOUT THE DUBLIN III REGULATION?

### ***Refugee Family Reunion***

Part 11 of the UK Immigration Rules currently states that:

“Your partner or child can apply to join or stay with you in the UK if: you were separated when you were forced to leave your country, [and] you’ve been given asylum or 5 years’ humanitarian protection but don’t yet have British citizenship.”<sup>5</sup>

When the UK leaves the European Union, and Dublin III, the UK Immigration Rules will provide the only means by which children can be legally reunited with their families. The Refugee Family Reunion section of the Rules applies only to spouses or partners, and to dependent children under 18 and born before the family fled. Under these provisions, family reunion visa applications are free of charge and refugee sponsors do not have to show that they will be able to maintain and accommodate their family members without recourse to public funds on arrival.

There are no conditions relating to the child being sponsored (for example, no need for the child to be an asylum-seeker or to fit any particular category) and the child gets the same leave as the parent has in the UK (without the need for the child to apply for asylum in the UK).

The UK’s Immigration Rules can apply to children anywhere in the world, and can therefore provide a safe and legal route for children, avoiding the need for them to embark on perilous journeys to Europe. This is a very positive aspect of the rules that we need to build on.

However, the UK Immigration Rules on refugee family reunion currently only allow parents with refugee status or humanitarian protection to sponsor their children. After years of conflict, many of these children have been orphaned or do not know where their parents are – but they may have grandparents, aunts, uncles, or adult brothers and sisters in the UK who can care for them. Furthermore, the UK’s refugee family reunion rules do not currently permit a child to sponsor their parent or main carer to join them in the UK.<sup>6</sup>

### ***Limited exceptional applications outside of the rules***

There have been some exceptional applications granted for family reunion outside of the UK Immigration Rules: in 2011, there were a total of 77 such applications, yet by 2014 the total had fallen to just 12. In 2013–15 - the period over which the global refugee crisis has grown dramatically - only 65 applications for refugee family reunion were granted outside of the rules. Over 20,000 family reunion applications were made during this period; 13,000 of these were granted<sup>7</sup>.

UK Entry Clearance Officers may allow applications outside of the rules by a wider set of family members – uncles, aunts, adult siblings – to bring over their unaccompanied child relative, meaning this child wouldn't have to travel to Europe. However, the low numbers granted show that Entry Clearance Officers rarely use this discretion.

### **WHAT ABOUT DUBLIN IV?**

The EU intends the Dublin III Regulation to be superseded by Dublin IV although not all Member States have agreed to opt in at the time of writing. The UK has stated that it will not sign up to Dublin IV because of its inclusion of a form of EU relocation scheme<sup>8</sup>.

We do not yet have legal clarity on whether a state that is party to Dublin III but not to Dublin IV can still be bound by the system in Dublin III on transfers of unaccompanied children's asylum cases; however it seems unlikely given the different measures and mechanisms that would need to be in place for the new Regulation to function in practice.

Given this it seems that the UK will be leaving the Dublin Regulation when Dublin IV comes into force, regardless of the UK's departure from the EU. If the UK's Immigration Rules are not widened to address this gap, many children will be left without a legal route to reach their family beyond their immediate parents.

### **USING THE GREAT REPEAL BILL TO HELP END DANGEROUS JOURNEYS**

#### ***Extend Refugee Family Reunion Rules***

At a time when the UK is looking to improve its own laws following the "Great Repeal Bill", and to avoid unfair disparities between its Immigration Rules for those inside and outside Europe, the UK should take this opportunity to improve its Immigration Rules.

Specifically, the UK should amend its Immigration Rules on refugee family reunion to allow extended family members such as adult siblings, grandparents, aunts and uncles who have refugee or humanitarian status to sponsor children in their family to join them in the UK, when it is in the child's best interests. This would tackle one of the key shortfalls that currently pushes children into the arms of smugglers and traffickers.

The children in question would be defined as those in a refugee or refugee-like setting – registered with UNHCR or the government where they are residing as an asylum-seeker or as a prima facie refugee or as a person of concern/child at risk.

The UK is already using a wider definition of family under the Dublin III regulation, allowing asylum-seeking children within Europe to reunite with adult siblings, grandparents, aunts and uncles as well as parents. The UK should use this wider definition of family in its own Immigration Rules so that regardless of the location of a child, they are able to reunite safely with family members in the UK without undertaking hazardous, exploitative journeys.

## ***Allow UK Citizens to Sponsor Their Refugee Child Relatives***

Alongside the UK Refugee Family Reunion Rules, unaccompanied children can in theory access family reunion through the UK's regular (non-refugee) family immigration rules. However in practice there are many barriers to this. The UK should reduce some of the conditions required of sponsors within the UK's regular (non-refugee) family immigration rules when the child to be sponsored has a protection need.<sup>9</sup>

For example, the minimum income threshold requirement could be dropped, or at least the income of the household could be calculated to take into account the funds available not only from the sponsor but also from other family members who are willing to support. This was supported in a recent ruling of the UK Supreme Court on 17 February 2017<sup>10</sup> when the Court held in a case concerning family reunion of spouses that the Rules and guidance need to be amended to take proper account of other possible sources of income and third-party financial support.

There are families in the UK who would want to come together to support a child relative currently living in danger in their region of origin or en route, and the costs to the public purse would be limited as all of their accommodation and maintenance costs would be covered by the family.

If these proposed amendments were made to the UK Immigration Rules it would enable children to be reunited from their regions of origin, in a regular and managed way, and taking on the leave status of their UK relative rather than adding to the stresses on the asylum system. If these changes are not made, children will continue to put themselves at risk.

## **ABOUT UNICEF UK**

Unicef, the United Nations Children's Fund, is mandated by the UN General Assembly to uphold the Convention on the Rights of the Child and promote the rights and well-being of every child. Together with partners, Unicef works in over 190 countries and territories to translate that commitment into practical action, focusing special effort on reaching the most vulnerable and excluded children, to the benefit of all children, everywhere. Unicef UK is one of 36 National Committees. Unicef has a specific role in providing advice and assistance to governments around the world in matters relating to children's rights. A child's right to family reunion is outlined in Article 10 and 22 of the UN Convention of the Rights of the Child.

## **ABOUT SAVE THE CHILDREN**

Save the Children is helping children survive and thrive in 120 countries around the world. We've been around for almost 100 years, and last year we reached 22 million children. We are grateful for the support of almost three quarters of a million campaigners, volunteers and fundraisers in the UK and the chance to work in partnership with the UK Government, leading British businesses like GSK, and partners like the Centre for Social Justice and RUSI. This support enables us to develop expert policy solutions to support children in the UK and overseas, champion transparency and efficiency and deliver locally-led long-term development programmes and emergency humanitarian aid.

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<sup>1</sup> UNCRC Concluding Observations: United Kingdom (2016)

<sup>2</sup> Close family includes adult siblings, aunts and uncles, parents and grandparents.

<sup>3</sup> Refugees can also sponsor their spouses to be reunited with them under the UK.

<sup>4</sup> [https://www.unicef.org/publications/files/EN\\_UNICEF\\_Central\\_Mediterranean\\_Migration.pdf](https://www.unicef.org/publications/files/EN_UNICEF_Central_Mediterranean_Migration.pdf)

<sup>5</sup> <https://www.gov.uk/settlement-refugee-or-humanitarian-protection/family-reunion>

<sup>6</sup> When a child is granted refugee status or humanitarian protection, this is in recognition of the fact that the child cannot live safely in their home country and therefore cannot join their parent there. By preventing children from applying for their parent or main carer to join them in the UK, the rules are enforcing family separation and risk depriving children of their right to family life.

<sup>7</sup> <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-04-08/32719/>

<sup>8</sup> <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-12-16/HCWS370/>

<sup>9</sup> Defined as those in a refugee or refugee-like setting – registered with UNHCR or the government where they are residing as an asylum-seeker or as a prima facie refugee or as a person of concern/child at risk

<sup>10</sup> <https://www.supremecourt.uk/cases/docs/uksc-2015-0011-press-summary.pdf>