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Brexit: refugee protection and asylum policy

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The European Union Committee

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Evidence is published online at <https://www.parliament.uk/hlinquiry-brexit-asylum-international-protection/> and available for inspection at the Parliamentary Archives (020 7219 3074).

Q in footnotes refers to a question in oral evidence.

SUMMARY

The 1951 UN Refugee Convention, and its 1967 Protocol, provide the foundation of international obligations relating to the protection of refugees. Within this framework, the EU has developed a Common European Asylum System (CEAS) which seeks to establish common standards for the reception and treatment of asylum seekers.

The UK has a selective relationship with the CEAS. It participates fully in the Dublin System—to determine which Member State is responsible for examining an asylum application lodged in the EU—and the Eurodac database of the fingerprints of asylum seekers. However, the UK is already out of step with EU asylum standards as it chose not to opt in to the most recent round of CEAS Directives on reception conditions, asylum procedures, and qualification for international protection. Nonetheless, leaving the CEAS could still have significant implications for UK asylum policy, and for vulnerable refugees and asylum seekers in Europe.

UK withdrawal from the Dublin System after Brexit would result in the loss of a safe, legal route for the reunification of separated refugee families in Europe. Vulnerable unaccompanied children would find their family reunion rights curtailed, as Dublin offers them the chance to be reunited with a broader range of family members than under current UK Immigration Rules.

In a ‘no deal’ 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. We are not satisfied that sufficient steps have been taken to mitigate disruption to 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 in the event of a ‘no deal’ Brexit. A temporary extension of current arrangements would be the most feasible option.

After Brexit, the UK is also likely to find it more difficult to enforce the principle that people in need of protection should claim asylum in the first safe country that they reach. Without access to the Eurodac database, it is unclear how the UK would be able to identify asylum applicants who have already been registered in another European country. And a new returns agreement (or agreements) would be needed for the UK to be able to send asylum seekers back to their first point of entry to the EU.

Another key concern is the potential for Brexit to impact the UK’s bilateral relationships with EU Member States which are essential to the effective management of UK borders, in particular the juxtaposed border controls with France and Belgium. These arrangements are underpinned by bilateral and trilateral agreements, but their continued operation has come under scrutiny in the context of Brexit. Juxtaposed controls are particularly unpopular in the Calais region, where they have resulted in the establishment of unregulated migrant camps, and calls to scrap the system increased following the 2016 referendum.

UK, French and Belgian border agencies continue to work together to tackle the rising trend in migrants attempting to cross the Channel in small boats, and the increase in people seeking to travel to the UK from Belgium following the closure of the Calais camps. Nonetheless, we are concerned about the

implications of Brexit for these relationships. The agreements underpinning bilateral border cooperation have undoubtedly been easier to sustain under the shared umbrella of EU membership, and a disruptive ‘no deal’ Brexit could place them under considerable strain. The Government must make every effort to maintain effective bilateral border cooperation after the UK leaves the EU, especially in a ‘no deal’ scenario, when good will towards the UK is likely to be in short supply.

Looking to the future relationship, it is clear that the UK and the EU must continue to work together to protect our borders and manage regional migration flows across Europe. Properly managed migration will help to ensure that asylum cases are handled in a timely, efficient and compassionate manner, in accordance with our obligations under the Refugee Convention and international human rights law.

We support the Government’s aim to establish a new, strategic relationship with the EU on asylum and illegal migration, and the framework for asylum cooperation set out in the July 2018 White Paper on the future UK-EU relationship. Subsequent publications, however, have not reflected the same level of ambition. 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. Future UK-EU asylum cooperation should take the Dublin System as its starting point and would ideally be 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.

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 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.

The Government should reconsider its opposition to participating in a European responsibility sharing mechanism for asylum seekers, if this becomes an established feature of EU asylum policy and operates on a voluntary basis. This would demonstrate solidarity, good will, and the UK’s commitment to play its part in managing migration flows across the continent, which could help to secure other UK objectives for future cooperation on asylum and migration.

The Government’s wider review of future UK immigration policy provides an opportunity to develop a more effective and humane asylum policy. This should include the expansion of UK refugee family reunion rules, and renewed efforts by the Home Office to improve the speed and efficiency of its handling of asylum cases.

We welcome plans to establish a single, global UK refugee resettlement programme from 2020. This should build on best practice from previous schemes, and be underpinned by a long-term funding commitment. Local authorities, charities and community groups must be closely involved in the design and delivery of this programme, and in the development of a consistent package of integration support for all recognised refugees in the UK whether they arrived via resettlement or as an asylum seeker. In the context of record numbers of forcibly displaced people worldwide, the Government should also be more ambitious than its current target of resettling 5,000 refugees in the first year of the new programme.

Finally, we urge Ministers to moderate the language they use when discussing asylum issues. The UK has a proud history of offering sanctuary to those in need, and should be a vocal advocate for protecting refugees from persecution. The Government should have the confidence publicly to challenge those who seek to present genuine asylum seekers as a threat and something to be feared.

Brexit: refugee protection and asylum policy

CHAPTER 1: INTRODUCTION

Overview

1. Since the EU began cooperating formally on asylum policy in the early 1990s, the UK has enjoyed, and frequently exercised, the right to decide which aspects of the EU's asylum system—the Common European Asylum System (CEAS)—it wishes to participate in. The UK opted into and is therefore bound by all the original CEAS legislative instruments, but chose to participate only in parts of the second phase of CEAS, namely, the Dublin III system for determining the Member State responsible for examining an asylum application lodged within EU territory, and the Eurodac database of the fingerprints of asylum seekers.
2. As a consequence of these decisions, the UK is already out of step with the EU standards on reception conditions, asylum procedures, and qualification for international protection, insofar as these differ from the provisions set out in international instruments like the 1951 UN Refugee Convention, its 1967 Protocol, and the European Convention on Human Rights (ECHR).
3. This report begins with an overview of international refugee law, the Common European Asylum System, and the different routes available for people in need of international protection to seek asylum in the UK. Chapter 3 considers whether and how leaving the CEAS will affect the UK's asylum system, how Brexit might affect bilateral cooperation on asylum and migration, and the particular implications of a 'no deal' scenario. Chapter 4 explores options for future UK-EU asylum cooperation, including in the context of a possible UK-EU agreement as well as on the basis of bilateral cooperation with individual Member States. Finally, Chapter 5 considers criticisms of the UK's asylum system and priorities for its future improvement.
4. The Committee has a long-standing interest in the area of asylum and international protection, particularly with regard to refugee children, and this report is usefully read alongside our 2016 report, *Children in crisis: unaccompanied migrant children in the EU*.¹

This inquiry

5. The EU Home Affairs Sub-Committee, whose members are listed in Appendix 1, met in June and July 2019 to take evidence for this inquiry. Before deciding to launch the inquiry, in February and March 2019, we also held two evidence sessions relevant to Brexit and asylum cooperation, which are referenced in this report. The Committee is grateful to all those who gave oral evidence or provided a written submission, who are listed in Appendix 2.
6. We also visited Oslo in June 2019, to explore the ways in which Norway, a member of the European Economic Area (EEA) but not an EU State,

1 European Union Committee, *Children in crisis: unaccompanied migrant children in the EU* (2nd Report, Session 2016–17, HL Paper 34)

works with the EU in the area of asylum and migration management. We would like to put on record our thanks to the UK Ambassador to Norway, Richard Wood, and all his staff, for their help in organising this valuable and informative visit.

Evidence from the Government

7. One of the evidence sessions (referenced above) which preceded this inquiry was with the then Immigration Minister, Caroline Nokes MP, on 13 March 2019. This session focused on future EU work migration, but included a brief discussion on how Brexit would affect UK-EU cooperation on asylum, refugee returns and family reunion, and possible features of the future UK-EU relationship in this area.
8. In May 2019, the Committee decided to launch a formal inquiry into the implications of Brexit for refugee protection and asylum policy, and published a call for evidence. We very much regret that—despite repeated invitations—the Government has been unable to find the time to provide oral or written evidence to this inquiry. The inquiry has raised very real concerns about how Brexit could affect refugees and asylum seekers, in particular separated families and unaccompanied children. The Government’s failure to give evidence means that there is little up-to-date public information available on how it is working to ensure that these vulnerable people who have already experienced trauma do not face additional suffering as a result of Brexit.
9. As this report was being agreed in September 2019, the Committee received a response from the Security Minister to a letter we had sent to the Home Office in July asking various questions relevant to this inquiry. Although not an adequate substitute for formal evidence, we refer to this response in the report as the only recent indication of the Government’s views on these important issues.
10. We take this opportunity to note that Ministers have a duty to be as open as possible with Parliament, and to account to, and be held to account by Parliament, for the decisions and actions of their departments and agencies. We do not consider that the context of Brexit, or any change in office holder, provides sufficient justification for failing to uphold these duties.
11. **We make this report to the House for debate.**

CHAPTER 2: REFUGEE PROTECTION: INTERNATIONAL, EU AND UK POLICY

International refugee protection

The UN Refugee Convention and Protocol

12. The 1951 UN Convention Relating to the Status of Refugees (the Refugee Convention) is the principal framework for international refugee protection. The Refugee Convention sets out the definition of a refugee and establishes the duty of *non-refoulement*, which prohibits States from returning individuals to territories where they are at risk of persecution, torture, or other forms of serious or irreparable harm.² The Convention also specifies the assistance and rights a refugee is entitled to receive, as well as refugees' obligations to their host country.
13. According to the Refugee Convention, a refugee is someone who:

“Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable, or owing to such fear, is unwilling to return to it.”³
14. The Refugee Convention was originally limited in scope to persons fleeing events occurring before 1 January 1951, and within Europe. The 1967 UN Protocol Relating to the Status of Refugees removed these limitations, giving the Convention universal coverage.⁴
15. Relevant passages of the Refugee Convention and the 1967 Protocol on the definition of the term ‘refugee’ are set out in Appendix 5.

Other international instruments

16. Other relevant international legal instruments highlighted by witnesses to this inquiry include:
 - The **UN Convention against Torture (CAT)**, which places an absolute prohibition on sending a person to a state where there is a real risk that he or she will be subject to torture.⁵

2 UN High Commissioner for Refugees (UNHCR), *The 10-Point Plan in Action, 2016: Glossary*, December 2016, available at: <https://www.refworld.org/docid/59e99eb94.html> [accessed 28 August 2019]

Refoulement can result following e.g. interception operations, rejection at the frontier or return to third countries (indirect *refoulement*). The principle is expressed in Article 33(1) of the Refugee Convention and is part of customary international law i.e. it is binding on all States whether or not they are parties to the Refugee Convention or other international or refugee human rights law.

3 UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p 137: <https://www.refworld.org/docid/3be01b964.html> [accessed 30 July 2019]

4 UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p 267: <https://www.refworld.org/docid/3ae6b3ae4.html> [accessed 30 July 2019]

5 Written evidence from Professor Elspeth Guild ([AIP0001](#))

- The **UN Convention on the Law of the Sea (UNCLOS)**, which requires the master of a ship to rescue persons in distress at sea. The International Conventions for the Safety of Life at Sea and Maritime Search and Rescue further clarify this duty to include the humane treatment of persons rescued at sea—in accordance with human rights obligations—and the delivery of such persons to a place of safety.⁶
- The **European Convention on Human Rights (ECHR)** does not provide for a right to asylum but Member States of the Council of Europe are obliged to secure the rights guaranteed by the ECHR for everyone within their jurisdiction, including migrants. Consequently, certain limitations are imposed on the right of Member States to turn people away from their borders, as they must act in accordance with ECHR principles and the case law of the European Court of Human Rights to guarantee that the human rights of asylum seekers are respected. This includes an obligation to respect the duty of *non-refoulement*.⁷

The Common European Asylum System (CEAS)

Establishing a common European asylum policy

17. Matters relating to asylum and immigration were first brought into the EU's sphere of competence by the 1992 Maastricht Treaty. The Maastricht Treaty established a structure for inter-governmental cooperation in a number of areas relating to Justice and Home Affairs, including asylum and migration of non-EU nationals.⁸

CEAS: phase one

18. The 1997 Treaty of Amsterdam established a new Title IV on 'visas, asylum, immigration and other policies related to the free movement of persons', which gave the EU powers to adopt measures on asylum and immigration. Between 2000 and 2006, the EU adopted six legislative measures relating to asylum, now known as the 'first phase' of the Common European Asylum System (CEAS):
 - The **2003 Dublin II Regulation**⁹, which established criteria to determine which Member State would be responsible for examining

6 Written evidence from the Immigration Law Practitioners' Association ([AIP0002](#)). See also: Irini Papanicolopulu, 'The duty to rescue at sea, in peacetime and in war: A general overview', *International Review of the Red Cross*, vol. 98 (2016), pp 491–514: https://www.icrc.org/en/download/file/56144/irc98_7.pdf [accessed 8 August 2019]

7 Written evidence from Professor Elspeth Guild ([AIP0001](#)), the Immigration Law Practitioners' Association ([AIP0002](#)), and Professor Bernard Ryan & Alan Desmond ([AIP0006](#)). See also: European Court of Human Rights, *Asylum* (2016): https://www.echr.coe.int/Documents/COURTalks_AsyI_Talk_ENG.PDF [accessed 2 August 2019] and case law arising under Articles 2 and 3 ECHR (the right to life and prohibition against torture and/or ill-treatment): *Saadi v Italy* (No. 37201/06), Judgment of 28 February 2008, *Auad v Bulgaria* (No. 46390/10), Judgment of 11 October 2011, *Al-Saadoon and Mufdi v the United Kingdom* (No. 61498/08), Judgment of 2 March 2010.

8 HM Government, Review of the Balance of Competences between the United Kingdom and the European Union: Asylum & non-EU Migration (February 2014), p 17: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/279096/BoC_AsylumImmigration.pdf [accessed 2 August 2019]

9 Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national [OJ L 50](#) (25 February 2003). So-called because it built on the principles of a Convention signed in Dublin in 2000 by the Member States of the (then) European Communities, which set out criteria for determining responsibility for examining asylum applications. This Convention entered into force in September 1997.

a given asylum application. These criteria should be considered in hierarchical order, moving from family reunification possibilities, to recent possession of a visa or residence permit in an EU Member State, to whether the applicant entered the EU irregularly or regularly. If none of these criteria are met, the first EU Member State a person enters from a third country would be responsible for examining the asylum application. Under this system, a Member State may submit a request to another Member State to ‘take charge’ of asylum applications lodged in their territory, which they think the other Member State is responsible for according to the Dublin criteria. If a request is accepted, the applicant is transferred to that country for their case to be processed.

- The **2000 Eurodac Regulation**¹⁰, which established an EU database of the fingerprints of asylum seekers.
 - The **2001 Temporary Protection Directive**¹¹, which established minimum standards for granting temporary protection, in other words an exceptional measure to grant immediate, temporary protection to displaced persons when standard asylum systems struggle to cope with demand due to a mass influx, risking a negative impact on the processing of asylum claims. The provisions of this Directive have never yet been triggered.¹²
 - The **2003 Reception Conditions Directive**¹³, which established minimum standards of living conditions for asylum applicants.
 - The **2004 Qualification Directive**¹⁴, which established common grounds for the qualification and status of third country nationals or stateless persons as refugees or people who otherwise need international protection.
 - The **2005 Asylum Procedures Directive**¹⁵, which established minimum standards on procedures for granting and withdrawing refugee status.
19. Under the provisions (then) applying in the Treaty of Amsterdam governing the UK’s opt-in arrangements, the UK chose to participate in all the CEAS measures adopted under the so-called first phase.¹⁶

10 Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of the Dublin Convention [OJ L 315](#) (15 December 2000)

11 Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof [OJ L 212](#) (7 August 2001)

12 [Q 37](#) (Professor Elspeth Guild)

13 Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers [OJ L 31](#) (6 February 2003)

14 Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted [OJ L 304](#) (30 August 2004)

15 Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status [OJ L 326](#) (13 December 2005)

16 HM Government, Review of the Balance of Competences between the United Kingdom and the European Union: Asylum & non-EU Migration, February 2014, p 18: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/279096/BoC_AsylumImmigration.pdf [accessed 2 August 2019]

CEAS: phase two

20. The 2007 Treaty of Lisbon maintained the UK's right to decide whether or not to participate in the new Title V (Justice and Home Affairs) and the Schengen *acquis* (the rules and legislation regulating the Schengen Area).¹⁷ The UK subsequently chose not to be bound by parts of the second phase of the CEAS, which 'recast' five of the original CEAS measures.
21. Phase two of the CEAS aimed to establish harmonised, rather than minimum, asylum standards. This was intended to reassure judicial systems that asylum seekers would have due access to international protection in any EU Member State, and thereby underpin the system of transferring (or 'returning'), asylum seekers to the Member State established as responsible for them according to the Dublin criteria.¹⁸

Table 1: UK participation in CEAS: phase two

Instrument	UK opt-in
The 2001 Temporary Protection Directive	Yes. (this Directive was not recast so the UK is bound by its original opt-in)
The 2012 Qualification Directive (recast) ¹⁹	No
The 2013 Eurodac Regulation (recast) ²⁰	Yes
The 2013 Dublin III Regulation (recast) ²¹	Yes
The 2013 Reception Conditions Directive (recast) ²²	No
The 2013 Asylum Procedures Directive (recast) ²³	No

Source: Written evidence from the British Red Cross (*AIP0008*)

17 Under Protocol 21 of the Treaty of Lisbon the UK must communicate to the President of the Council its desire to participate in EU legislation brought forward under a Justice and Home Affairs legal basis (to 'opt in'). Under Protocol 19 of the Treaty of Lisbon, the UK can request to participate in some or all of the provisions of the Schengen *acquis*. In line with this, the UK currently participates in the police and judicial cooperation aspects of Schengen but not those dealing with border controls. The UK is presumed to be in any new measures that build upon those parts of the Schengen *acquis* in which it already participates, unless it notifies the President of the Council that it does not wish to take part (to 'opt out').

The Schengen Area is currently made up of the EU Member States (except Bulgaria, Croatia, Cyprus, Ireland, Romania and the UK) and four non-EU States: Iceland, Norway, Liechtenstein and Switzerland. Checks at the internal borders of Schengen States are abolished, while controls at the Area's external borders are tightened, in accordance with a single set of rules. European Commission, 'Schengen Area': https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen_en [accessed 4 August 2019]

18 Written evidence from the European Children's Rights Unit and Liverpool Law Clinic (*AIP0007*) and the British Red Cross (*AIP0008*), *Q 2* (Featonby) and *Q 18* (Dr Hanne Beirens)

19 Directive 2011/95 of 13 December 2011 *OJL 337* (20 December 2011)

20 Regulation (EU) 603/2013 of 26 June 2013 *OJL 180* (29 June 2013)

21 Regulation (EU) 604/2013 of 26 June 2013 *OJL 180* (29 June 2013)

22 Directive 2013/33 of 26 June 2013 *OJL 180* (29 June 2013)

23 Directive 2013/32 of 26 June 2013 *OJL 180* (29 June 2013)

22. Where the UK did not opt into the recast measures, it remains bound by the original phase one CEAS instruments.²⁴

UK participation in other aspects of EU asylum cooperation

23. Outside of the CEAS, the UK also participates selectively in various other aspects of EU asylum cooperation:

Table 2: Other EU asylum and migration measures

Measure	Purpose	UK participation
European Asylum Support Office (EASO)	An agency to support facilitate, coordinate and strengthen practical cooperation among EU Member States on asylum.	Yes
Frontex	An agency to coordinate cooperation between Member States in external border management, and provide training, technical help, and operational assistance.	No However, the UK may collaborate with Frontex operationally on a case-by-case basis.
EUNAVFOR MED (Operation Sophia)	A military crisis management operation aiming to disrupt human smuggling and trafficking networks in the Southern Central Mediterranean.	Yes
Asylum, Migration and Integration Fund (AMIF)	A fund to promote the efficient management of migration flows and the implementation, strengthening and development of a common EU approach to asylum and immigration.	Yes
EU Readmission Agreements	Agreements the EU has concluded with 17 third countries providing for the readmission of those countries' own nationals who do not have a lawful basis of residence in the EU.	Yes (The UK participates in most of these agreements) ²⁵
Returns Directive	Sets minimum standards for the return of third-country nationals staying illegally on the territory of an EU Member State.	No

24 Written evidence from the European Children's Rights Unit and Liverpool Law Clinic ([AIP0007](#))

25 We note that, since 2010, the UK Government has unilaterally asserted that its opt-in arrangements apply to some of the international agreements negotiated by the EU that underpin these readmission agreements. The Government has argued unsuccessfully to that end before the Court of Justice of the EU (CJEU). See, for example, case 377/12, *European Commission v the Council of the European Union (the Philippines case)*, Judgment 11 June 2014. We examined the implications of this approach in our 2015 report: European Union Committee, *The UK's opt-in Protocol: implications of the Government's approach* (9th Report, Session 2014–15, HL Paper 136)

Measure	Purpose	UK participation
Immigration Liaison Officers (ILO) network	Allows Member States to send ILOs to non-EU countries to establish and maintain contacts with the relevant authorities of that country, with a view to combatting illegal immigration.	Yes
Family Reunification Directive	Establishes common rules governing the exercise of the right to family reunification by third country nationals, including special rules for refugees.	No

Source: European Parliament, *The future relationship between the UK and the EU in the field of international protection following the UK's withdrawal from the EU*, (October 2018): [http://www.europarl.europa.eu/RegData/etudes/STUD/2018/608836/IPOL_STU\(2018\)608836_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/608836/IPOL_STU(2018)608836_EN.pdf) [accessed 2 August 2019] and European Union Committee, *Operation Sophia, the EU's naval mission in the Mediterranean: an impossible challenge* (14th Report, Session 2015–16, HL Paper 144)

Criticisms of the CEAS

24. Despite the ambitions of the second phase of CEAS reforms, witnesses to this inquiry were clear that the establishment of a truly common European asylum system was an “ongoing project”.²⁶
25. The European Children’s Rights Unit (ECRU) and Liverpool Law Clinic, based at the University of Liverpool, said that the aims sought by the CEAS had been “achieved to varying degrees”. In particular, they considered that the Dublin Regulation was “not operating in the way intended ... to provide a clear, swift means” of determining responsibility for processing an asylum claim, and transferring asylum seekers to the responsible Member State. They argued that Member States were applying the discretion available to them under the Dublin Regulation in a “self-interested, negative way”, with transfers “typically characterised by lengthy, complex and often hostile proceedings”, which failed to comply with specified time limits.²⁷

Table 3: Time limits for Dublin transfers

Procedure	Timeframe
Submitting take charge requests	Three months from receiving an asylum application or within two months of a ‘hit’ on the Eurodac database.
Replying to take charge requests	Two months after receiving the request.
Transferring applicants	Within six months of the acceptance of the request or the final decision on an appeal or review.

Source: Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, *OJ L 180* (29 March 2013)

26 Written evidence from Professor Bernard Ryan & Alan Desmond (AIP0006)

27 Written evidence from the European Children’s Rights Unit and Liverpool Law Clinic (AIP0007)

26. Professor Bernard Ryan and Alan Desmond, of the University of Leicester, believed that the Dublin System was “too oriented to the position of states, and [did] not take into account the legitimate preferences of individuals”. They acknowledged that the CEAS had succeeded in establishing common minimum standards for asylum, but added: “At the same time, the extent to which common harmonised standards are in place across the [EU] is questionable, particularly in light of judicial condemnation of reception conditions for asylum seekers in individual EU countries.”²⁸
27. Judith Dennis, Policy Manager at the Refugee Council, agreed that the implementation of the CEAS Directives relating to reception conditions and procedures was “still very variable”, and thought that the EU had not yet achieved “the vision of it not mattering which European member state one claims asylum in”.²⁹ Rossella Pagliuchi-Lor, UNHCR’s Representative to the UK, explained:
- “That is the first reason why many [asylum seekers] tend to choose one country over another, particularly countries where the existence of a community gives them better chances of receiving assistance and help to integrate.”³⁰
28. Refugee Rights Europe told us that their research indicated “widespread human suffering across the continent, as a direct or indirect result of the CEAS, Dublin protocols and national level policies”, including:
- Sub-par, unsanitary living conditions in overcrowded reception centres at ‘hotspot’³¹ arrival areas in Greece and Italy, and at transit points such as Calais and Ventimiglia.
 - Health conditions caused by unhealthy living environments or the experience of violence, including mental health issues, which were compounded by a lack of access to medical care.
 - Police violence at temporarily reintroduced border control points, including the excessive use of tear gas and arbitrary detention.
 - A lack of legal advice, guidance and adequate safeguarding mechanisms for displaced children.
 - A lack of support for displaced women, including lack of safeguarding, poor camp design, and lack of access to sexual and reproductive healthcare, including during pregnancy and following rape.³²

The 2015 refugee crisis

29. In 2015–16, more than a million refugees and other migrants—a high proportion of whom were fleeing the conflict in Syria—arrived in the EU.³³ The asylum systems of several Member States struggled to cope with this

28 Written evidence from Professor Bernard Ryan & Alan Desmond ([AIP0006](#))

29 [Q 2](#) (Judith Dennis)

30 Oral evidence taken on 6 February 2019 (Session 2017–19), [Q 5](#) (Rossella Pagliuchi-Lor)

31 The ‘hotspot’ approach involves the EU agencies EASO and Frontex working on the ground to support the authorities of those EU States facing disproportionate migratory pressures at the EU’s external borders.

32 Written evidence from Refugee Rights Europe ([AIP0009](#))

33 See for example written evidence from Professor Elspeth Guild ([AIP0001](#)) and Professor Bernard Ryan & Alan Desmond ([AIP0006](#))

unprecedented influx of asylum seekers, particularly those in Italy and Greece, which faced disproportionate numbers of arrivals due to their location at the southern external border of the EU. As a result, many asylum seekers chose to travel north rather than applying for asylum at their first point of entry to the EU.

30. In response, eight Schengen States temporarily reinstated controls at some intra-EU border crossing points. At the EU-level, a new *Agenda for Migration*³⁴ established additional support for the registration of asylum seekers at ‘hotspot’ arrival points in Greece and Italy, and plans to relocate 160,000 asylum seekers from these hotspots to other EU countries. Legislative proposals for further reform of the CEAS, EASO, and Frontex were tabled in 2016.³⁵
31. Several witnesses commented on the implications of the 2015 crisis for the CEAS. Prof Ryan and Alan Desmond, for example, thought that efforts to relieve the pressure on Italy and Greece through relocation had had “limited success, on account of the opposition of a number of Member States”.³⁶ Professor Elspeth Guild, Professor of Law at Queen Mary University of London, suggested: “[The relocation mechanism] has not been a great success and has created an enormous amount of ill will, with the idea and the creation of two camps: the western European camp and now the Visegrád camp.”³⁷
32. ECRU and Liverpool Law Clinic referred to a recent report by the European Council for Refugees and Exiles, which found that, after the crisis, a minority of EU countries—Germany, France, Italy, and Spain—continued to shoulder the main burden of asylum applications in the EU.³⁸ Dr Hanne Beirens, Acting Director of the Migration Policy Institute Europe, explained that this imbalance had brought the issue of “fair responsibility sharing” to the fore in negotiations on proposed EU asylum reforms, with significant disagreement over “the question of what it means to do your fair share and how you then make sure all Member States duly apply it”. Dr Beirens continued:

“The frustration is so high that Member States are now willing to resort to quite drastic measures; for example, Italy saying, ‘No more boats in our harbours’, and some western European countries actively contemplating rethinking the Schengen system and saying, ‘Let us make

34 Communication from the Commission on a European Agenda on Migration, [COM\(2015\) 240 final](#) (13 May 2015)

35 Jan-Paul Brekke & Anne Staver, ‘The renationalisation of migration policies in times of crisis: the case of Norway’, *Journal of Ethnic and Migration Studies*, vol. 44, (2018), pp 2163–2181: <https://www.tandfonline.com/doi/full/10.1080/1369183X.2018.1433026> [accessed 4 August 2019]

As of 2019, Prof Guild told us: “the Nordic region has continued to apply some border controls among their states, Germany continues to apply some controls with Austria, and France retains the exceptional power on counter-terrorism grounds. But the impact of these controls has diminished very considerably.” Written evidence from Professor Elspeth Guild ([AIP0001](#)). See also Appendix 4: Visit to Oslo.

36 Written evidence from Professor Bernard Ryan & Alan Desmond ([AIP0006](#))

37 [Q 37](#) (Professor Elspeth Guild). The Visegrád group is a cultural and political alliance of four EU Member States: the Czech Republic, Hungary, Poland, and Slovakia.

38 Written evidence from the European Children’s Rights Unit and Liverpool Law Clinic ([AIP0007](#)). See also European Council on Refugees and Exiles, *The implementation of the Dublin III Regulation 2018*, (March 2019): http://www.asylumineurope.org/sites/default/files/aida_2018update_dublin.pdf [accessed 8 August 2019]

participation in it contingent or conditional upon people doing their fair share on asylum’.”³⁹

33. Efforts to address pressure on the asylum systems of EU border states through the creation of a relocation mechanism in the proposal to reform the Dublin System (Dublin IV⁴⁰) have been contentious—holding up negotiations on the entire package of asylum reforms. At the time of drafting, these reforms have yet to be agreed.⁴¹

Figure 1: Proposed reforms to the EU’s asylum system

	Reason for reform	Legislative proposal
Reform of the Dublin system	Creating a fairer, more efficient and more sustainable system for allocating asylum applications among Member States.	Proposal for a new Dublin Regulation
Reinforcing the EURODAC system	Adapting and reinforcing the Eurodac system and expanding its purpose in order to facilitate returns and help tackling irregular migration, and overall to support the practical implementation of the reformed Dublin System.	Proposal for a new Eurodac Regulation
A new mandate for the EU’s asylum agency, currently EASO	Transforming the existing European Asylum Support Office into a fully-fledged European Union Agency for Asylum with an enhanced mandate and considerably expanded tasks to address any structural weaknesses that arise in the application of the EU’s asylum system.	Proposal for a Regulation on the European Agency for Asylum
Greater convergence in the EU asylum system	Establishing a common EU procedure for asylum applications as well as harmonised protection standards and rights for asylum seekers and harmonised reception conditions throughout the EU to reduce differences in recognition rates from one Member State to the next, discourage secondary movements and ensure common effective procedural guarantees for asylum seekers.	Proposal for a new Asylum Procedures Regulation Proposal for a new Receptions Conditions Directive Proposal for a new Qualification Regulation

Source: European Commission, *The Common European Asylum System (CEAS)*, (July 2016): https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/20160713/factsheet_the_common_european_asylum_system_en.pdf [accessed 4 August 2019]

34. Despite delays and disagreement, Refugee Rights Europe believed:

“The current ongoing reform efforts aimed at changing the Common European Asylum System are an important opportunity to implement lessons learned from recent years, creating a system that works better for the displaced, host communities, national governments and EU institutions.”⁴²

Routes to asylum in the UK

35. The CEAS provides one route for asylum seekers to come to the UK—via a Dublin transfer—but there are several other ways that people in need of international protection might seek refuge in the UK.

39 [Q 18](#) (Dr Hanne Beirens)

40 This proposal [COM\(2016\) 270 final](#) was sifted for examination to the House of Lords EU Home Affairs Sub-Committee and remains held under scrutiny.

41 Written evidence from Refugee Rights Europe ([AIP0009](#)) and [Q 28](#) (Dr Hanne Beirens)

42 Written evidence from Refugee Rights Europe ([AIP0009](#))

Asylum

36. Asylum seekers who arrive spontaneously—those who reach the UK by their own means and are encountered at their point of entry, or later by police or social services—must apply for asylum if they want to stay in the UK as a refugee. Applicants register their asylum claim at a meeting with an immigration officer known as a ‘screening’. During this meeting, the applicant will be photographed, fingerprinted, and interviewed, and must produce passports, travel documents, and identification documents (if they have them). After this, the person will be assigned a caseworker and may be detained at an immigration removal centre while their application is considered. The applicant will undergo a further interview to explain and provide evidence to support their asylum claim, before their application is granted or denied. Successful asylum applicants will usually be granted five years’ leave to remain, after which they can apply to settle in the UK.⁴³

Refugee resettlement programmes

37. Resettlement is a separate process, under which people are granted refugee status or another form of protection while abroad and then brought to live in the UK through a resettlement programme. The UK operates four resettlement programmes (see Box 1) with UNHCR undertaking all out-of-country casework: identifying and interviewing registered refugees, assessing their vulnerability and whether they meet UNHCR resettlement criteria, before referring them to the UK for consideration.

43 Home Office, ‘Claiming asylum in the UK’: <https://www.gov.uk/claim-asylum> [accessed 4 August 2019]

Box 1: UK refugee resettlement programmes**Gateway:**

- aims to resettle 750 refugees per year;
- people resettled through Gateway must have been living in a protracted refugee situation for over five years, unless there is an urgent need for resettlement (e.g. life endangerment);
- individuals are granted Indefinite Leave to Enter⁴⁴ as a refugee on arrival;
- costs are funded by the Government for 12 months.

Mandate:

- resettles recognised refugees with a close family member in the UK who is willing to accommodate them;
- the refugee must be a minor child, spouse, or parent or grandparent aged over 65 of someone settled in the UK;
- no annual resettlement quota or target;
- resettled refugees are expected to be accommodated and supported by their family member in the UK.

Vulnerable Persons Resettlement Scheme (VPRS) and Vulnerable Children's Resettlement Scheme (VCRS):

- VPRS resettles refugees currently in Egypt, Iraq, Jordan, Lebanon or Turkey who have fled the recent Syrian conflict (i.e. after March 2011);
- VCRS resettles child refugees and their families currently in Egypt, Iraq, Jordan, Lebanon or Turkey, where UNHCR deem resettlement to be in the best interests of the child;
- VPRS has a target of resettling 20,000 refugees between 2015 and 2020;
- VCRS has a target of resettling 3,000 refugees between 2016 and 2020;
- individuals resettled through VPRS and VCRS are granted five years' refugee leave on arrival, and may then apply for Indefinite Leave to Remain free of charge;
- the VPRS and VCRS are delivered in partnership with local authorities and stakeholders in the voluntary, private and community sectors;
- costs that fall to local authorities during the first year are reimbursed using the overseas aid budget; further funding is allocated on a tariff basis over years two to five of the scheme, based on individual need.

Source: Home Office, *Resettlement: policy statement*, (July 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/730643/Resettlement_Policy_document_.pdf [accessed 4 August 2019]

38. As of 24 May 2019, 15,977 people had been resettled in the UK under the VPRS and 1,410 had been resettled through the VCRS.⁴⁵
39. On the whole, witnesses to this inquiry were positive about UK resettlement efforts in recent years. Judith Dennis, for example, said that the UK's

⁴⁴ Leave to Enter is granted to a person who is outside of the UK. Leave to Remain is granted to a person who is present in the UK.

⁴⁵ Written Answer [260061](#), [Commons written answer]

resettlement programmes “massively expanded” in 2014 and 2015, and the UK could now “rightly call itself a global leader in resettlement”.⁴⁶ The Refugee Council told us that the UK was third in the world in terms of the numbers of people resettled, and praised the design of recent resettlement schemes:

“Importantly, the VCRS and VPRS have been designed with adequate funding and allowing for long-term support, to better aid integration. The success of these schemes should provide a model for how resettlement can be delivered in rich, developed countries throughout Europe.”⁴⁷

Other routes

Family reunion

40. In addition to family reunion transfers taking place under the Dublin System, the UK has its own refugee family reunion rules. Under these rules, partners and children of people with refugee status, humanitarian protection or settlement on protection grounds may apply to join them in the UK. Partners include a person’s husband, wife, civil partner or person they have been in a genuine relationship with for two years before applying to settle. Children must be under the age of 18 and not married or in a civil partnership. Child refugees in the UK are not allowed to sponsor their parents or other family members to join them.⁴⁸

The ‘Dubs scheme’

41. In 2016 Lord Dubs led a successful campaign to amend the Immigration Bill to commit the UK to relocating and supporting unaccompanied refugee children from other countries in Europe. The so-called ‘Dubs amendment’ initially specified a target of 3,000 children, but this was rejected by the House of Commons. A subsequent version of the amendment with no fixed target was accepted by the Government in May 2016, and became section 67 of the Immigration Act 2016.

Box 2: The ‘Dubs scheme’

Unaccompanied refugee children: relocation and support

1. The Secretary of State must, as soon as possible after the passing of this Act, make arrangements to relocate to the United Kingdom and support a specified number of unaccompanied refugee children from other countries in Europe.
2. The number of children to be resettled under subsection (1) shall be determined by the Government in consultation with local authorities.
3. The relocation of children under subsection (1) shall be in addition to the resettlement of children under the Vulnerable Persons Relocation Scheme.

Source: *Immigration Act 2016*, section 67

46 Q 4 (Judith Dennis)

47 Written evidence from the Refugee Council (AIP0003)

48 Home Office ‘Settlement: refugee or humanitarian protection: Family reunion’: <https://www.gov.uk/settlement-refugee-or-humanitarian-protection/family-reunion> [accessed 4 August 2019]. See also oral evidence taken on 13 March 2019 (Session 2017–19), Q 13 (Rt Hon Caroline Nokes MP, then Immigration Minister).

42. Following consultation with local authorities, the Government set a cap of 480 child refugees allowed to transfer to the UK through the Dubs scheme, of whom approximately 220 have arrived so far.⁴⁹

Humanitarian protection

43. Humanitarian protection was introduced in 2003 to fulfil the UK's obligations under the 2004 EU Qualification Directive. It replaced the previous Exceptional Leave to Remain (ELR) policy.⁵⁰
44. Humanitarian protection (referred to as subsidiary protection in EU law) is for people who do not qualify for refugee status under the terms of the Refugee Convention but are still in need of international protection. Under the UK's Immigration Rules, a person may be granted humanitarian protection when they face a real risk of serious harm on one or more of the following grounds: the death penalty or execution, unlawful killing, torture or inhuman or degrading treatment, prison conditions, general violence and other severe humanitarian conditions, or, indiscriminate violence.
45. People who qualify for humanitarian protection are usually granted five years' limited leave to remain, during which time they may work and can access public funds if needed. After five years, a safe return review will be carried out to determine whether the person is still in need of protection and may be placed on a route to settlement. If the person no longer qualifies for protection, they must to apply to remain on another basis or leave the UK.⁵¹

How many asylum seekers are in the UK?

46. In 2018 the UK received approximately 30,000 asylum applications from 'main applicants' (not including dependents). The number of asylum applicants received in any given year does not, of course, reflect the number of asylum seekers in the UK, as the process of applying for asylum can continue over several months, or even years, between an initial decision, appeal, and potentially a judicial review. Other approaches to quantifying the number of asylum seekers in the UK include looking at the number of asylum cases 'in progress'—88,848 at the end of June 2018—and the number of people receiving the benefit given to asylum seekers who do not have independent means—44,258 at the end of December 2018.⁵²

How does the UK compare with other countries?

47. Several witnesses drew our attention to the relatively low number of asylum seekers in the UK compared to other countries. Prof Guild, for example, told us that the UK received about 6% of asylum seekers who applied for

49 [QQ 10–11](#) (Lord Dubs)

The Minister told us that over 220 Dubs children were transferred to the UK when the Calais camp was cleared in late 2016. Since that time, he said that the UK had made "continuous progress ... to refer and transfer more eligible children to move closer to the commitment to transfer 480 children." Letter dated 10 September 2019 from Rt Hon Brandon Lewis MP, Minister of State for Security and Deputy for EU Exit and No Deal Preparation, to Lord Jay of Ewelme (see Appendix 7)

50 Under ELR, a person would usually be given four years' leave to remain in the UK, after which they would have to apply for indefinite leave to remain.

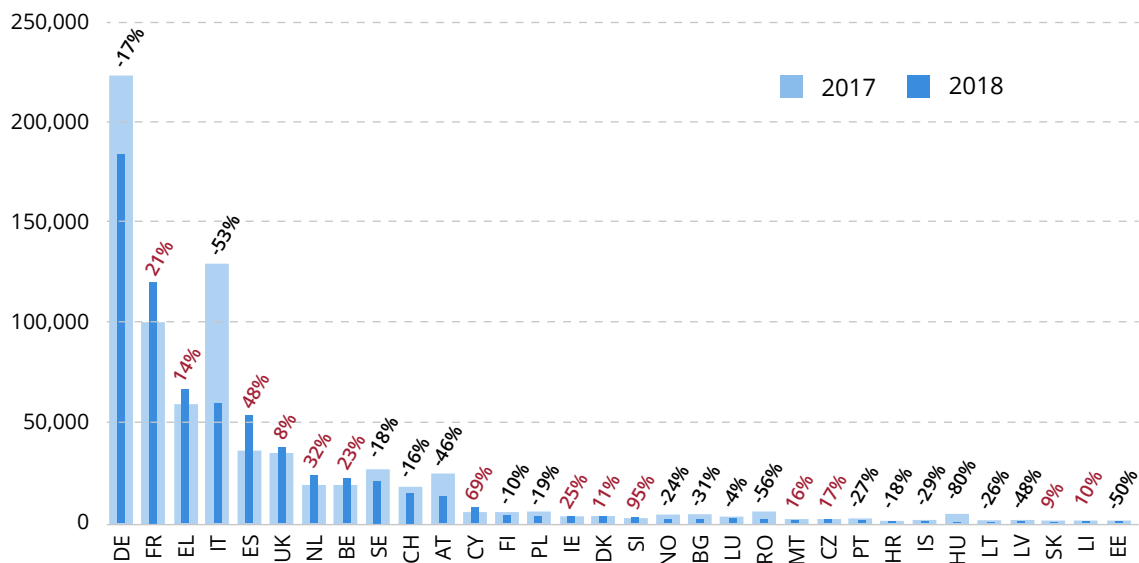
51 Home Office, *Humanitarian Protection*, (March 2017): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/597377/Humanitarian-protection-v5_0.pdf [accessed 2 August 2019]

52 Georgina Sturge, 'Migration statistics: How many asylum seekers and refugees are there in the UK?' *House of Commons Library*, (18 March 2019): <https://commonslibrary.parliament.uk/insights/migration-statistics-how-many-asylum-seekers-and-refugees-are-there-in-the-uk/> [accessed 5 August 2019]

protection in the EU. Rossella Pagliuchi-Lor noted that the UK—as was the case in many other countries—tended to “overestimate the number of people who come to that country relative to other countries”. She observed that, in 2017, the UK received 35,000 new asylum applications, compared to 93,000 applications in France, 127,000 in Italy, and 198,000 in Germany.⁵³

48. Figure 2 shows a comparison of the total number of asylum applications lodged in States participating in the Dublin System (the EU Member States, Iceland, Norway, Switzerland and Liechtenstein) during 2017 and 2018.

Figure 2: Asylum applications lodged in Dublin States, by receiving country and year 2017–18



Source: EASO, *Annual Report on the Situation of Asylum in the European Union 2018*, (June 2019): <https://www.easo.europa.eu/sites/default/files/easo-annual-report-2018-web.pdf> [accessed 2 August 2019]

49. Colin Yeo, an immigration barrister at Garden Court Chambers, agreed that the UK took “comparatively few people in comparison to other EU countries, particularly per population”. He added:

“A lot of countries would be surprised to hear us having this kind of discussion about 30,000 asylum seekers per year. The number of refugees or internally displaced persons that Middle Eastern countries ... end up hosting is huge compared to the number that we are talking about, which is very small.”⁵⁴

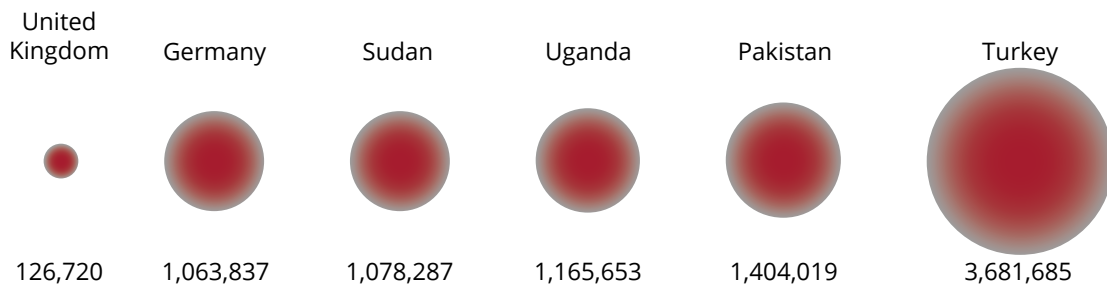
50. According to UNHCR, nearly 70.8 million people were displaced at the end of 2018, including 41.3 million internally displaced people, 25.9 million refugees, and 3.5 million asylum seekers. About 80% of refugees live in countries neighbouring their countries of origin, which—as Rossella Pagliuchi-Lor pointed out—are often countries with far smaller populations and “immeasurably smaller resources” than European countries.⁵⁵

53 Oral evidence taken on 6 February 2019 (Session 2017–19), Q 2 (Rossella Pagliuchi-Lor)

54 Q 36 (Colin Yeo)

55 UNHCR, *Global Trends: forced displacement in 2018*, (June 2019): <https://www.unhcr.org/5d08d7ee7.pdf> [accessed 5 August 2019] and oral evidence taken on 6 February 2019 (Session 2017–19), Q 2 (Rossella Pagliuchi-Lor)

Figure 3: Refugee numbers in the UK compared to top refugee-hosting countries in 2018

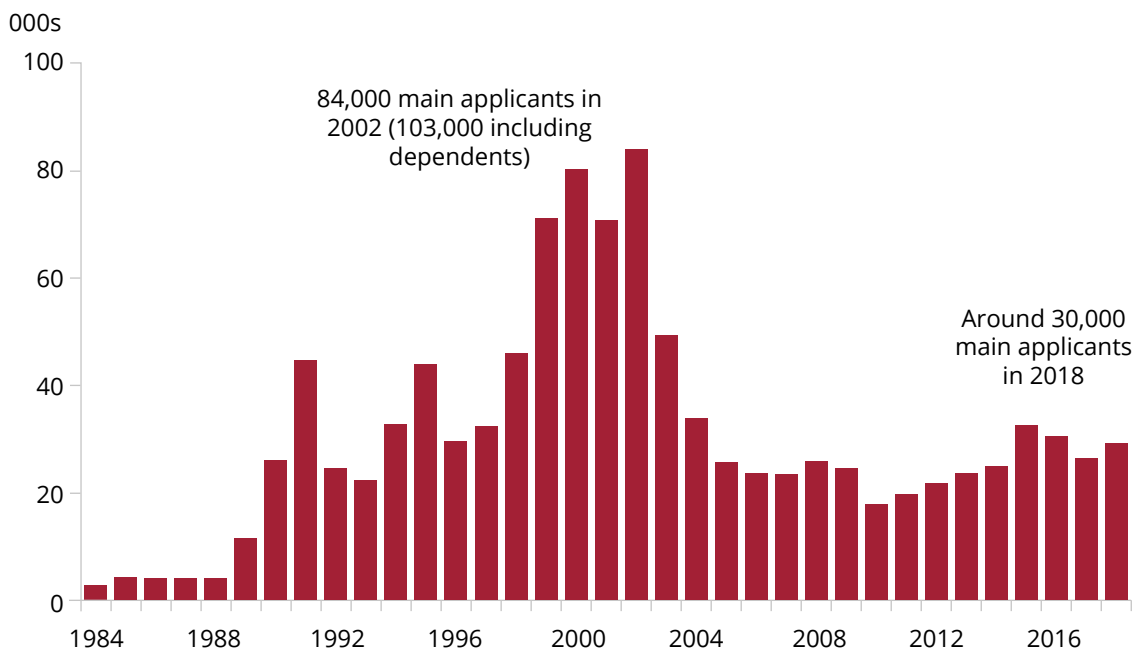


Source: UNHCR, *Global Trends: forced displacement in 2018*, pp 65–68 (June 2019): <https://www.unhcr.org/5d08d7ee7.pdf> [accessed 28 August 2019]

Recent trends

51. The number of asylum applications in the UK peaked in 2002 and has since fallen substantially. Despite the 2015 refugee crisis, the number of applications for asylum in the UK has remained fairly stable over the past five years (see Figure 4).

Figure 4: Asylum applications in the UK



Source: Georgina Sturge, 'Migration statistics: How many asylum seekers and refugees are there in the UK?' House of Commons Library, (18 March 2019): <https://commonslibrary.parliament.uk/insights/migration-statistics-how-many-asylum-seekers-and-refugees-are-there-in-the-uk/> [accessed 5 August 2019]

52. There was an increase in asylum applications across the EU during the first part of 2019, although numbers are still significantly lower than during the peak of the 2015–16 crisis. According to EASO, the total number of asylum applications lodged in the EU between January and May 2019 was up by 14% compared to the same period in 2018. For May 2019, the most common countries of origin of asylum applicants were Syria, Afghanistan, and Venezuela, with Iraq, Colombia, Nigeria, Pakistan, Iran, Turkey and Georgia

also featuring among the top 10. Compared to the first five months of 2018, there were three times as many asylum applications from Colombians, twice as many from Hondurans and Venezuelans, and 3,000 applications from Nicaraguans compared to just one hundred the previous year.⁵⁶

53. Dr Beirens observed that a substantial proportion of current asylum applicants in the EU were from Latin and Central American countries with visa-free travel arrangements to the Schengen Area. She explained that the problem of visa loopholes was causing concern among some Member States, and expected it to become a priority issue for the EU.⁵⁷

Conclusions

54. **The 1951 UN Refugee Convention, and its 1967 Protocol, provide the foundation of international obligations relating to the protection of refugees. The Refugee Convention defines who is a refugee, establishes the duty of non-refoulement, and outlines refugees' rights as well as their obligations to their host country. Other relevant international instruments include the UN Conventions against Torture and on the Law of the Sea, and the European Convention on Human Rights (ECHR).**
55. **Within this framework, the EU has developed a Common European Asylum System (CEAS) which seeks to establish common standards for the reception and treatment of asylum seekers. Key CEAS measures include the Dublin System—to determine which Member State is responsible for examining an asylum application lodged in the EU—and the Eurodac database of the fingerprints of asylum seekers.**
56. **While the CEAS has successfully established common minimum standards for examining asylum applications in the EU, it has not yet been able to achieve harmonisation to ensure that, no matter where someone applies for asylum in the EU, the outcome will be similar.**
57. **The Dublin System has been characterised by low numbers of, and inefficiency in processing, transfer cases, although improvements have been made, particularly with regard to family reunion. The 2015 refugee crisis exposed further flaws, as a minority of EU countries faced a disproportionate burden in terms of arrival numbers and significant numbers of people chose to travel north rather than applying for asylum in the first EU country they reached.**
58. **Negotiations on further reforms to the CEAS have stalled due to significant disagreement among Member States over plans to establish a 'corrective allocation mechanism' in the proposed Dublin IV Regulation to relieve the pressure on countries facing high numbers of asylum arrivals.**
59. **The UK has a selective relationship with the CEAS. It participates fully in the Dublin and Eurodac Regulations but only opted into the original Directives on reception conditions, asylum procedures, and**

56 EASO, 'Latest asylum trends: May 2019', (8 July 2019): <https://www.easo.europa.eu/latest-asylum-trends> [accessed 5 August 2019]

57 [Q 26](#) (Dr Hanne Beirens)

qualification for international protection (not the phase two recast versions).

60. **At the national level, there are a number of routes through which people in need of international protection might seek refuge in the UK, including: the asylum process for spontaneous arrivals, four refugee resettlement programmes, family reunion rules, the ‘Dubs scheme’ for unaccompanied children, and humanitarian protection.**
61. **The UK receives a relatively low number of asylum applications compared to other European countries, not to mention the total number of displaced people worldwide. Despite the 2015 refugee crisis, the number of applications for asylum in the UK (30,000 in 2018) has remained fairly stable over the past five years. Across the EU, the number of people arriving to seek asylum has fallen significantly since the 2015 crisis, but has recently begun to rise, with notable increases in applicants from Latin and Central American countries.**

CHAPTER 3: BREXIT IMPLICATIONS

Introduction

62. An agreement on the terms of the UK’s withdrawal from the EU was reached at negotiator level in November 2018, and endorsed by leaders at a special meeting of the European Council (EU-27) later that month.⁵⁸ At the time of writing, the Withdrawal Agreement had been rejected by the House of Commons on three separate occasions but remained the only negotiated Brexit ‘deal’ on the table.
63. In March 2019, the then Immigration Minister, Caroline Nokes MP, told us that the Government’s aim was to secure the Withdrawal Agreement, under which the UK would remain part of the Dublin System during the transition period. This would provide the necessary time to negotiate an agreement on future UK-EU asylum and migration cooperation. The UK’s ultimate intention, however, would be to leave the CEAS, including Dublin, and explore a new framework for cooperation on the basis set out in the July 2018 White Paper on the future UK-EU relationship.⁵⁹
64. In this Chapter, we consider the implications of leaving the CEAS, how Brexit might affect bilateral cooperation between the UK and individual EU Member States on immigration and asylum, and the particular implications of a ‘no deal’ Brexit scenario.

Leaving the CEAS

Dublin and Eurodac

65. ECRU and Liverpool Law Clinic told us that low numbers of transfers took place through the Dublin System, suggesting that the “classic rationale” for it—as a “corrective mechanism” against asylum seekers moving from the country in which they first arrived to seek protection elsewhere (‘secondary movement’)—was “not numerically significant for most Member States”.⁶⁰

Table 4: Dublin transfers to and from the UK 2008–2018

Year	Transfers in	Transfers out	Net
2008	403	1,217	-814
2009	368	995	-627
2010	268	995	-727
2011	271	--	--
2012	262	714	-452

58 Department for Exiting the European Union, Withdrawal Agreement and Political Declaration (25 November 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759019/25_November_Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf [accessed 5 August 2019]

59 Oral evidence taken on 13 March 2019 (Session 2017–19), Q 12 (Rt Hon Caroline Nokes MP and Glyn Williams) and Letter from Rt Hon Caroline Nokes MP, (then) Minister of State for Immigration to Lord Jay of Ewelme, 10 April 2019: <https://www.parliament.uk/documents/lords-committees/eu-home-affairs-subcommittee/Immigration/letter-from-caroline-nokes-to-lord-jay-100419.pdf> [accessed 5 August 2019]

60 Written evidence from the European Children’s Rights Unit and Liverpool Law Clinic (AIP0007)

Year	Transfers in	Transfers out	Net
2013	273	827	-554
2014	69	252	-183
2015	131	519	-388
2016	553	355	198
2017	461	314	147
2018	1,215	209	1,006

Source: Written evidence from Professor Bernard Ryan & Alan Desmond (AIP0006) Figures are based on Eurostat data for 2008–2017 and Home Office, Immigration Statistics for 2018. The published data for 2011 are incomplete.

Nonetheless, the University noted there were other motivations for continued participation in the Dublin System:

“Most significant among these, according to academic analyses, seems to be that Member States value the control that the Dublin system gives them over applicants for and beneficiaries of international protection ... Analyses also point to the political benefit that Member States perceive that they derive from this performance of control before their domestic electorates.”⁶¹

66. Dr Natascha Zaun, Assistant Professor in Migration Studies at the European Institute, London School of Economics, suggested that the idea that Dublin acted as a deterrent to secondary movement was another motivating factor for countries like the UK, as its geographic location—and non-membership of Schengen—made it difficult for asylum seekers to reach without earlier being apprehended and fingerprinted in another Member State. Dr Zaun acknowledged, however, that this effect was hard to measure, as you could not know “who never came to the UK, or was deterred from coming here, because of Dublin”.⁶²
67. On returns, the Immigration Law Practitioners’ Association (ILPA) pointed out that losing access to Eurodac after Brexit would make it difficult to identify whether someone had already made an asylum application in another country before reaching the UK. Even if the UK discovered that an application had been made in an EU Member State, ILPA were not clear how the UK would negotiate the removal of the asylum seeker to that country in the absence of the Dublin System.⁶³
68. Eleanor Harrison, Chief Executive of Safe Passage, was concerned that refugee children in particular would be at greater risk of being left in “extremely vulnerable situations” without the procedural safeguards the Dublin System provided on time limits, and the types of evidence and re-examination processes used in transfer cases.⁶⁴
69. Rossella Pagliuchi-Lor conceded that the Dublin System had not operated as it should, but argued: “Generally speaking, even a nominal framework

61 Written evidence from the European Children’s Rights Unit and Liverpool Law Clinic (AIP0007)

62 Oral evidence taken on 6 February 2019 (Session 2017–19), Q 5 (Dr Natascha Zaun)

63 Written evidence from the Immigration Law Practitioners’ Association (AIP0002)

64 QQ 12–14 (Eleanor Harrison)

that does not deliver at its best is better than none. You need it because it provides a basis for further discussion and arrangements.”⁶⁵

Family reunion

70. Witnesses agreed that the most significant implication of leaving the Dublin System would be for refugee family reunion. Judith Dennis told us: “There have been very positive steps towards the family unification elements of Dublin that we would be very sorry to see go.”⁶⁶
71. The British Red Cross said that the UK had recently changed from a net ‘sender’ to a net ‘receiver’ of asylum seekers under the Dublin System (see Table 4). Family reunion was the “key driver” behind this change, accounting for over 80% of incoming transfers in 2018.⁶⁷ The Refugee Council thought that this indicated Dublin was now “working more to prioritise the wellbeing and needs of people seeking asylum, over policy demands to increase removals”.⁶⁸
72. Safe Passage pointed out that children had greater family reunion rights under Dublin III than under UK Immigration Rules.⁶⁹ As we have noted, the UK’s domestic rules cover only children and their parents, while the Dublin System allows children to be reunited with other relatives including adult siblings, grandparents, aunts, and uncles (see paragraph 40).⁷⁰
73. SOS Children’s Villages UK told us:
- “[Our] experience tells us that all children need stable, resilient relationships in order to thrive, and that these are best developed in a caring family environment. Children who have been separated from their families are some of the most vulnerable, having lost the people primarily responsible for making decisions on their behalf, guaranteeing their safety and supporting their development to adulthood. Yet under the current rules, and if the Dublin routes are no longer available, unaccompanied children in the UK will be expected to integrate and succeed with no familial support—causing significant emotional trauma and challenges for their successful transition to adulthood. This is certainly not in the best interest of the child.”⁷¹

Standards and procedures

74. As the UK only participates in the first iterations of the CEAS Directives on reception conditions, qualification for international protection, and asylum procedures, Brexit will only affect asylum standards and procedures in the UK insofar as they relate to these instruments. Consequently, several witnesses questioned the extent to which withdrawal from these Directives would affect standards in the UK.⁷²

65 Oral evidence taken on 6 February 2019 (Session 2017–19), [Q 5](#) (Rossella Pagliuchi-Lor)

66 [Q 3](#) (Judith Dennis)

67 Written evidence from the British Red Cross ([AIP0008](#))

68 Written evidence from the Refugee Council ([AIP0003](#))

69 Supplementary written evidence from Safe Passage ([AIP0011](#))

70 Unicef UK, ‘Keeping Families Together: Retaining Children’s Rights to Family Reunion Through Brexit’, (June 2017): https://downloads.unicef.org.uk/wp-content/uploads/2017/06/KeepingFamiliesTogether_FINAL.pdf?_ga=2.136078641.1864465453.1565081360-1008748374.1565081360 [accessed 6 August 2019]

71 Written evidence from SOS Children’s Villages UK ([AIP0012](#))

72 See for example written evidence from Professor Elspeth Guild ([AIP0001](#)) and [Q 2](#) (Jon Featonby).

75. Rossella Pagliuchi-Lor saw no reason why the UK’s “very long and proud tradition of offering sanctuary” should change as a result of Brexit, noting that the UK had played a leading role in the development of the Refugee Convention and supported the UN Global Compact on Refugees agreed in December 2018.⁷³ Prof Guild pointed out that the standards of the EU Directives would only fall away where they did not express standards already established in international law—including the Refugee Convention, CAT, and ECHR—and said there was no indication the UK intended to denounce these treaties.⁷⁴

76. On international law, Prof Ryan and Alan Desmond commented:

“This means, for example, that the refugee definition in the Refugee Convention would continue to apply to the UK. Similarly, key protections set out in the Refugee Convention such as *non-refoulement* and non-penalisation for illegal entry or stay in a country would continue to bind the UK. The European Court of Human Rights in its supervision of the ECHR has also articulated a number of important rights for asylum-seekers which will continue to apply to the UK at the international level.”

They cautioned, however, that these instruments did not provide “the same level of detail and clarity concerning the standards of protection for asylum seekers and refugees” as the CEAS.⁷⁵ ILPA agreed, noting as an example that there was no provision in the ECHR regarding the right of asylum seekers to remain in the country where they have applied for asylum until their claim has been decided. This right is guaranteed under the 2005 Asylum Procedures Directive and 2003 Reception Conditions Directive.⁷⁶

77. Refugee Rights Europe was concerned that Brexit “may lead to a weakening of protections afforded to refugees and asylum seekers” in the UK,⁷⁷ while Judith Dennis observed:

“[The] thing to fear when there is no framework of standards to adhere to is retrograde steps. A lot of what we do as NGOs in this country working on asylum is trying to stop the proposals that we think will take us backwards on standards. Obviously if you are not part of a framework of standards, that is a risk.”⁷⁸

Other measures

AMIF

78. Both the British Red Cross and the Refugee Council were concerned about losing access to the EU’s Asylum, Migration and Integration Fund (AMIF), which was established in April 2014 to cover the period 2014–20. They noted that the UK had been the largest recipient of AMIF funding, and was allocated €370 million to spend on national priorities such as improving Home Office processes and the returns programme, and in support of refugee resettlement programmes and integration measures. On the impact

73 Oral evidence taken on 6 February 2019 (Session 2017–19), [Q 3](#) (Rossella Pagliuchi-Lor). See also: UNHCR, ‘The Global Compact on Refugees’: <https://www.unhcr.org/uk/the-global-compact-on-refugees.html> [accessed 6 August 2019].

74 Written evidence from Professor Elspeth Guild ([AIP0001](#)) and [Q 31](#) (Professor Elspeth Guild)

75 Written evidence from Professor Bernard Ryan & Alan Desmond ([AIP0006](#))

76 Written evidence from the Immigration Law Practitioners’ Association ([AIP0002](#))

77 Written evidence from Refugee Rights Europe ([AIP0009](#))

78 [Q 3](#) (Judith Dennis)

of losing AMIF, Judith Dennis told us: “Both in the Home Office and in programmes it has funded, it certainly would not be insignificant.” Jon Featonby, Policy and Advocacy Manager at the British Red Cross, noted continued uncertainty over whether the Government would replace the AMIF at the national level and, if so, what the priorities of this fund would be.⁷⁹

Box 3: Examples of UK activities funded by the AMIF

New Roots

A partnership project between the Refugee Council, Refugee Education Training Advice Service, Humber Community Advice Services, Path Yorkshire and the Goodwin Trust to roll out a model of integration for refugees in London, Leeds, and Hull. The project aims to engage with more than 3,500 refugees over two years, providing a range of support to improve the integration of people with multiple and complex needs including:

- Specialist casework
- Social integration, language and wellbeing activities
- Training, volunteering and employment opportunities

AVAIL

A two-year partnership project between the Red Cross Societies in the UK, Ireland, Italy, and Latvia to build on the experiences of refugees and asylum seekers and increase their participation and representation in their new local communities. In the UK, AVAIL aims to empower refugees to develop connections with local people by recognising their untapped skills, including projects where refugees and asylum seekers:

- teach their languages and skills to host communities;
- are supported to bring about changes in policy and practices through advocacy and media work;
- co-deliver sessions for new arrivals on the realities of life in their new community on the basis of their first-hand, lived experience.

Source: [Q 8](#) (Judith Dennis), RETAS, ‘What is New Roots?’: <https://retasleeds.weebly.com/new-roots.html> [accessed 6 August 2019], and Red Cross EU Office, ‘Promoting integration and diversity across Europe’: <https://redcross.eu/projects/promoting-integration-and-diversity-across-eu> [accessed 6 August 2019]

Readmission agreements

79. Prof Ryan and Alan Desmond noted that the EU had concluded a number of Readmissions Agreements with third countries to facilitate the return of non-EU nationals who did not have the legal right to stay in the EU, including rejected asylum seekers. It did not appear “legally possible” for the UK to rely upon these agreements after Brexit, and so the UK would need to negotiate new agreements with countries it wished to continue cooperating with on returns.⁸⁰

79 Written evidence from the British Red Cross (AIP0008) and QQ 5–8 (Judith Dennis, Jon Featonby)

80 Written evidence from Professor Bernard Ryan & Alan Desmond (AIP0006)

'No deal'

80. In the context of a 'no deal' Brexit scenario, witnesses' key concern was the potential impact on the reunion of separated refugee families. Dr Zaun warned that the UK's sudden departure from the Dublin System with no replacement framework for family reunion could leave families in "legal limbo".⁸¹ Rossella Pagliuchi-Lor was concerned about disruption while new arrangements were negotiated:

"Think about having to support yourself and maybe your children when there is no system ... It takes months and months even for an application for family reunion, which, by the way, you are entitled to, and you are stuck in some kind of legal twilight zone. You have to survive somehow. Most people have already depleted their resources, to the extent that they had any, on the journey. That creates by and of itself a major risk in ensuring their survival and that of their family. The risks come from the gaps in the system."⁸²

81. Refugee Rights Europe thought that a 'no deal' Brexit would leave a specific gap in provision for unaccompanied minors seeking to reunite with family in the UK, which could "lead to more vulnerable children taking increasingly desperate and dangerous journeys in order to reach the UK".⁸³ As Lord Dubs explained, the Dubs scheme would not be a legal path for these children, as it is "primarily intended for children with no family [in the UK]".⁸⁴

Mitigation

82. The British Red Cross told us that the Government had introduced the Immigration, Nationality and Asylum (EU Exit) Regulations 2019 to mitigate the impact of an abrupt exit from the CEAS. However, this only committed the UK to continue considering "cases already in the Dublin System", where a take charge request had been received or sent prior to exit day. They therefore believed that a substantial number of people seeking family reunion could still be affected, thanks to the significant delays in accessing asylum systems in some EU countries. Those affected could include those who had made an initial asylum application, but were waiting for a take charge request to be processed at the point of a 'no deal' Brexit.⁸⁵
83. Rossella Pagliuchi-Lor suggested a temporary extension of current arrangements for UK-EU asylum cooperation "to make space for renegotiation". Dr Zaun believed this would be "the most feasible option" as it was "already there, so you could draw on it and extend it". Dr Zaun said the UK and EU had "shared interests" in continuing asylum cooperation: "Both sides would have to be open to compromise, but their preferences are not so divergent on this as perhaps in other areas."⁸⁶
84. On the other hand, Jan Bayart, Deputy Head of Mission at the Belgian Embassy in the UK, warned:

81 Oral evidence taken on 6 February 2019 (Session 2017–19), [Q 8](#) (Dr Natascha Zaun)

82 Oral evidence taken on 6 February 2019 (Session 2017–19), [QQ 8–11](#) (Rossella Pagliuchi-Lor)

83 Written evidence from Refugee Rights Europe ([AIP0009](#))

84 [Q 13](#) (Lord Dubs)

85 Written evidence from the British Red Cross ([AIP0008](#)). See also Immigration, Nationality and Asylum (EU Exit) Regulations 2019 ([SI 2019/745](#)).

86 Oral evidence taken on 6 February 2019 (Session 2017–19), [Q 11](#) (Dr Natascha Zaun and Rossella Pagliuchi-Lor)

“In a no deal Brexit ... it might be erroneous to assume that the EU would then engage in negotiations on co-operation in various matters, simply forgetting about the issues addressed in the withdrawal treaty—contentious or not.”⁸⁷

85. Eleanor Harrison told us: “One of my critical concerns is that, in other people’s priorities in negotiations in the event of no deal, asylum is not at the top of the list.”⁸⁸

Bilateral cooperation

Juxtaposed border controls

86. The UK has particularly close bilateral relations on border cooperation with France and, to a lesser extent, Belgium. The key feature of this relationship is the operation of juxtaposed border controls, whereby the UK completes checks on passengers and freight bound for the UK at the ports in Calais and Dunkirk, the Eurotunnel terminal in Coquelles for vehicles, and in Paris Gare du Nord, Lille, Calais-Frethun and Brussels Midi stations for Eurostar passengers. French border officials also complete Schengen Area entry checks in the UK.⁸⁹ The principal bilateral and tripartite agreements which underpin these arrangements are outlined in Box 4.

Box 4: Juxtaposed controls

Juxtaposed controls began in 1994, when the Sangatte Protocol to the 1986 Treaty of Canterbury between the UK and France established the application of all categories of border control to people travelling through the Channel Tunnel. In May 2000, a second agreement between the UK and France authorised pre-boarding immigration controls at Eurostar stations. In 2003 the UK and France concluded the Le Touquet Treaty, which provided for immigration controls to be conducted by the country of arrival at designated control zones in the country of departure at both French and UK sea ports, including Calais, Dunkirk and Dover. A 2004 tripartite agreement between the UK, France, and Belgium introduced pre-boarding immigration controls on departures from the Brussels Eurostar station.

Source: Bernard Ryan and Valsamis Mitsilegas, *Extraterritorial Immigration Control: Legal Challenges*, (Leiden: Martinus Nijhoff, 2010) p 16

87. While these agreements are not EU-related, their continued operation has come under scrutiny in the context of Brexit. Following the 2016 referendum, there were increased calls in France to scrap Le Touquet and bring juxtaposed border arrangements to an end—including from the then French Presidential candidates Alain Juppé and Emmanuel Macron, and from the Mayor of Calais.⁹⁰
88. Prof Guild explained:

“One of the outcomes of the [Le Touquet] agreement is the build-up of pressure in the Calais region of people who seek to come to the UK but who do not fulfil immigration requirements and are unable to seek

87 Q 53 (Jan Bayart)

88 Q 16 (Eleanor Harrison)

89 Home Office, ‘Factsheet: The UK’s juxtaposed border controls’ (11 July 2017): <https://homeofficemedia.blog.gov.uk/2017/07/11/fact-sheet-the-uks-juxtaposed-border-controls/> [accessed 7 August 2019]

90 Home Affairs Committee, *Migration Crisis*, (Seventh Report, Session 2016–17, HC 24)

asylum in the UK from France. However, the continuous establishment of unregulated camp sites for people in this position is an irritant in French politics.”

Prof Guild argued that the issue of juxtaposed border controls was “more pertinent” than any implications of leaving the CEAS in the context of Brexit, as the UK depended on the good will of French authorities to keep migrants (mainly potential asylum seekers) out of the UK.⁹¹

89. Refugee Rights Europe suggested that the UK had not fulfilled its responsibility to “meaningfully address the precarious and untenable bottleneck scenario”, which had been “unfolding in northern France for decades”. They noted that this situation had recently spread, with asylum seekers gathering in other European cities such as Brussels and Paris in the hope of travelling to the UK.⁹²

The Sandhurst Treaty

90. Several witnesses reflected on the recent UK-France agreement to address migrant camps and reinforce their commitment to Le Touquet at the January 2018 Sandhurst Summit. This agreement contained new declarations on security cooperation and a treaty concerning coordinated management of the shared UK-French border (underpinned by an additional commitment of €50 million from the UK).⁹³

91. Dr Beirens believed that the adoption of the Sandhurst Treaty was “really important”, and indicated that there was a “willingness to cooperate”, in order to achieve “deeper integration” and to balance “the interests of the UK and some of the concerns on the part of France”.⁹⁴

92. Prof Ryan and Alan Desmond explained that the Sandhurst Treaty had made provision for the “speedy resolution of Dublin applications made in France for individuals to join family members in the UK”.⁹⁵ On the success of these measures, Jon Featonby said:

“We have certainly seen a change since the Sandhurst Treaty came in, in that we have successfully been able to work quite closely with the Home Office on a number of cases of separated children that might previously have been refused through the Dublin mechanism.”⁹⁶

93. On the other hand, the Refugee Council told us that the Treaty’s commitment to decrease waiting times for family reunification from six months to 30 days for adults and 25 days for children had not “carried over to full changes on the ground”. They also criticised the focus on border security over the “wellbeing and access to rights of people seeking asylum”.⁹⁷

91 Written evidence from Professor Elspeth Guild ([AIP0001](#))

92 Written evidence from Refugee Rights Europe ([AIP0009](#))

93 Written evidence from the Refugee Council ([AIP0003](#)), Professor Bernard Ryan & Alan Desmond ([AIP0006](#)), [Q 6](#) (Judith Dennis, Jon Featonby), [Q 24](#) (Dr Hanne Beirens). The documents agreed at the Sandhurst Summit are available from HM Government, *UK-France Summit 2018: documents* (18 January 2018): <https://www.gov.uk/government/publications/uk-france-summit-2018-documents> [accessed 7 August 2019]

94 [Q 24](#) (Dr Hanne Beirens)

95 Written evidence from Professor Bernard Ryan & Alan Desmond ([AIP0006](#))

96 [Q 6](#) (Jon Featonby)

97 Written evidence from the Refugee Council ([AIP0003](#))

94. Refugee Rights Europe noted that £3.6 million of the UK's overall financial commitment had been allocated to a 'Dublin development fund' for joint projects to improve the efficiency of the Dublin process between the UK and France. They called for 10% of this funding to be allocated to support unaccompanied minors in the border area, and for 10% of the total Sandhurst funding commitment to be ring-fenced for humanitarian purposes, including:
- the deployment of additional social workers, interpreters and medical staff;
 - the provision of shelters;
 - physical and mental healthcare, with a particular focus on sexual and reproductive healthcare.⁹⁸

The 2019 joint action plan

95. Prof Ryan and Alan Desmond highlighted another recent agreement on UK-France cooperation, the January 2019 joint action plan.⁹⁹ This plan aims to build on the Sandhurst Treaty to tackle the trend of asylum seekers and other migrants attempting to reach the UK by crossing the Channel in small boats. It provides that:
- Migrants rescued at sea will be taken to a port of safety in accordance with international maritime law;
 - Up to €7 million (around £6 million) will be invested in reinforcing preventative security measures;
 - The return of migrants will be carried out expeditiously, in accordance with international obligations and national law;
 - A strategic communication campaign on the risks of illegal migration to deter people from using the sea route will be expanded.¹⁰⁰
96. Prof Ryan and Alan Desmond welcomed the joint action plan's affirmation of international and EU law in relation to the rescue and potential return of migrants to France or elsewhere.¹⁰¹ Refugee Rights Europe, however, felt that the plan alluded to the "interception and blanket return of asylum seekers", which they found "deeply concerning". They argued that the UK was obliged by international law to "allow asylum applicants to have their asylum claims assessed on an individual basis". Returning people to France failed to take into account the living conditions of refugees and displaced people in northern France, and "the wider context of overstretched asylum systems elsewhere in Europe".¹⁰²

98 Written evidence from Refugee Rights Europe (AIP0009). See also Home Office, 'Fact sheet on the UK's support for asylum-seeking and refugee children in Europe' (19 January 2018): <https://homeofficemedia.blog.gov.uk/2018/01/19/fact-sheet-on-the-uks-support-for-asylum-seeking-and-refugee-children-in-europe/> [accessed 7 August 2019]

99 Written evidence from Professor Bernard Ryan & Alan Desmond (AIP0006)

100 House of Lords Library, *English Channel Migrant Boat Crossings*, Library Briefing, LLN 2019/0029, March 2019

101 Written evidence from Professor Bernard Ryan & Alan Desmond (AIP0006)

102 Written evidence from Refugee Rights Europe (AIP0009)

Brexit implications

97. There was a general concern among witnesses about the implications of Brexit for bilateral cooperation. Prof Guild, for example, told us:

“The Le Touquet agreement is undoubtedly facilitated by the fact that it is an agreement among friends—and friends who are tied in the legal framework of the European Union. With this kind of agreement, beyond or without that framework, it may be much more difficult to sustain the necessary good will.”¹⁰³

98. Prof Guild emphasised the lack of support for juxtaposed border controls in the Calais region, suggesting they could, “on the turn of a pin, become a state sovereignty issue” in France. If this was the case, the UK would have “a very difficult time maintaining [Le Touquet]”. Prof Guild also highlighted the risk that intensified customs controls after Brexit could cause delays and queues of vehicles waiting to cross the Channel, possibly creating a “pull factor” for migrants to try and break into these vehicles to try and reach the UK. This would “increase the political pressure on the French Government in respect of [Le Touquet]”.¹⁰⁴
99. Judith Dennis feared that efforts to speed up family reunification under the Sandhurst agreement would be put at risk by Brexit, as the Treaty was based on expediting Dublin transfers. As a result, the UK and France would need “a separate mechanism ... to enable the bringing together of families as they do currently”.¹⁰⁵
100. Jon Featonby said the close cooperation between the British and French Red Cross Societies on family reunification depended upon the existence of national agreements between the French and UK Governments. It was hard to predict what UK-France cooperation might look like after Brexit, but there was “certainly a danger that if that cooperation [was] not there, the impact that could have on people would be quite worrying”.¹⁰⁶

‘No deal’

101. Dr Zaun observed that, if good will between the UK and the EU was damaged in a ‘no deal’ scenario, Member States might be less likely to “keep asylum seekers in their territories and not just wave them through” after Brexit.¹⁰⁷ Prof Guild, however, noted that action by some Member States to move asylum seekers through their territories during the 2015 refugee crisis had been “much denounced” in the EU. She added: “The pressure to engage in these dubious practices is infinitely smaller now, because there has been an exponential increase in reception conditions across the EU.”¹⁰⁸
102. Dr Beirens did not think that new legal arrangements would necessarily be needed to maintain bilateral cooperation on family reunion in a ‘no deal’ scenario, as long as there was the willingness to send and receive people.

103 [Q 35](#) (Professor Elspeth Guild)

104 [Q 35](#) (Professor Elspeth Guild)

105 [Q 6](#) (Judith Dennis)

106 [Q 6](#) (Jon Featonby)

107 Oral evidence taken on 6 February 2019 (Session 2017–19), [Q 5](#) (Dr Natascha Zaun)

108 [Q 34](#) (Professor Elspeth Guild)

103. On the other hand, Alice Lucas, Advocacy and Policy Manager at Refugee Rights Europe, suggested that a new bilateral arrangement with France would be a priority.¹⁰⁹ Lord Dubs agreed:

“All the evidence is that we should work towards some form of bilateral agreement if we crash out without a deal, because otherwise [transfers] will not work. I hope the British Government are extending a hand of cooperation to the French on this—even now, before we have finalised our [Brexit] arrangements.”¹¹⁰

104. We put the possibility of new bilateral arrangements to Jan Bayart, who said that Belgium highly valued its relationship with the UK, but warned that there was “no official Belgian Government position on what would or would not be possible on a bilateral basis in the case of a no deal Brexit”. He stressed that any such arrangements could not extend to the EU security tools and measures, which had “proven to be such a cost-efficient way of cooperating in these matters”, concluding:

“So in our view, even in the case of a bilateral agreement, the result would be less desirable than it was before Brexit, or in the case of an orderly Brexit that would open the perspective on an EU-UK co-operation agreement with regard to these EU instruments.”¹¹¹

105. The implications of Brexit and future options for UK involvement in EU security measures are discussed in detail in our reports on *Brexit: future UK-EU security and police cooperation* and *Brexit: the proposed UK-EU security treaty*.¹¹²

Conclusions

Leaving the CEAS

106. **The November 2018 Withdrawal Agreement has been rejected three times by the House of Commons. Nonetheless, it remains the only negotiated Brexit deal on the table. If approved, the Withdrawal Agreement would ensure UK participation in the Dublin System could continue until the end of the transition period, giving the UK and the EU time to negotiate new arrangements for asylum cooperation.**
107. **The Government has indicated its intention to establish a new strategic relationship on asylum and migration with the EU—replicating some of the key principles of Dublin—rather than seeking some form of continued participation in the CEAS after Brexit.**
108. **The most significant implication of leaving the CEAS would be the loss of a safe, legal route for the reunification of separated refugee families in Europe. This aspect of the Dublin System has seen improvements in recent years, and family reunion cases now make up more than 80% of incoming Dublin transfers to the UK. We are particularly concerned about a potential reduction in the reunion rights of vulnerable unaccompanied children, who are able to be**

109 [Q 28](#) (Alice Lucas, Dr Hanne Beirens)

110 [Q 16](#) (Lord Dubs)

111 [QQ 51–53](#) (Jan Bayart)

112 European Union Committee, *Brexit: future UK-EU security and police cooperation* (7th Report, Session 2016–17, HL Paper 77) and *Brexit: the proposed UK-EU security treaty* (18th Report, Session 2017–19, HL Paper 164)

reunited with a broader range of family members under the Dublin System than under UK Immigration Rules.

109. **Other benefits of the Dublin System include procedural safeguards, such as time limits, and increased control over asylum applications, including the ability to identify and return applicants who have already been registered in another European country. This is of clear interest to countries like the UK who seek to enforce the principle that those in need of protection should claim asylum in the first safe country they reach.**
110. **Asylum standards in the UK will only be affected by Brexit insofar as they relate to the first phase of CEAS Directives. We note concerns about the loss of procedural protections set out in these Directives, and the possibility of “retrograde steps” without the overarching EU framework of standards. Nonetheless, we are reassured that the continued application of international law—including the Refugee Convention and ECHR—should ensure there is no diminution in the treatment and protection of asylum seekers in the UK.**
111. **We call 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.**
112. **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.**

Bilateral cooperation

113. **Bilateral relationships with EU Member States are essential to the effective management of UK borders, including asylum and migration flows. In particular, we highlight the system of juxtaposed border controls, which allows the UK to conduct checks on passengers and freight in France and Belgium, and France to complete Schengen entry checks in the UK.**
114. **These arrangements are underpinned by bilateral and trilateral agreements, but their continued operation has come under scrutiny in the context of Brexit. Juxtaposed controls are particularly unpopular in the Calais region, where they have resulted in the establishment of unregulated camps of migrants seeking to travel to the UK to claim asylum.**
115. **Calls to scrap juxtaposed controls, which followed the 2016 referendum, have now receded, and the UK and France have sought**

to reinforce their commitment to bilateral border cooperation through the recent Sandhurst Treaty and a joint action plan to tackle the rising trend in migrants attempting to cross the Channel in small boats. However, the effectiveness of these measures is questionable, and they have been subject to criticism for prioritising border control over humanitarian support.

116. **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.**

CHAPTER 4: FUTURE UK-EU ASYLUM COOPERATION

A new UK-EU strategic relationship?

117. Witnesses agreed that the UK and the EU should continue to cooperate on asylum matters after Brexit. Rossella Pagliuchi-Lor, for example, said:
- “Whether you are inside or outside the European Union, the reality is that [the UK] will remain part of the broader geographical area and, therefore, will be very much impacted by the regional flows that we see across the continent. I think you will need to continue to be part of some kind of co-operation agreement.”¹¹³
118. Eleanor Harrison told us: “It has to be a pan-European response because the flows of refugees change ... otherwise you are trying to predetermine how people will travel.”¹¹⁴
119. Alice Lucas believed it would be mutually beneficial for the EU and the UK to maintain asylum cooperation after Brexit, to fulfil their international obligations relating to refugee protection. UK-EU cooperation to maintain safe, legal asylum routes would also be financially beneficial, as it would reduce the need to spend “vast sums on expensive border security measures.”¹¹⁵ In written evidence, Refugee Rights Europe suggested that UK-EU asylum cooperation after Brexit could also have a positive impact on the UK’s bilateral relationships with EU Member States “experiencing significant strain on their asylum systems”.¹¹⁶
120. The British Red Cross and the Refugee Council agreed that asylum cooperation should be part of any agreement on the future UK-EU relationship, as inter-governmental collaboration was the only way to respond effectively to the needs of displaced people.¹¹⁷

The framework for future cooperation

121. Colin Yeo drew our attention to the Government’s July 2018 White Paper on the future UK-EU relationship, which set out a broad framework for a “new, strategic relationship to address the global challenges of asylum and illegal migration”. This framework would include:
- operational cooperation, for example, through Frontex and Europol;
 - a new legal framework to return asylum-seekers to a country they have travelled through, or have a connection with, to have their protection claim considered, facilitated by access to Eurodac or an equivalent system;
 - new arrangements to enable unaccompanied asylum-seeking children in the EU to join close family members in the UK, where it is in their best interests, and *vice versa*;
 - a continued strategic partnership to address the drivers of illegal migration by investing and building cooperation in source and transit countries;

113 Oral evidence taken on 6 February 2019 (Session 2017–19), [Q 3](#) (Rossella Pagliuchi-Lor)

114 [Q 16](#) (Eleanor Harrison)

115 [Q 23](#) (Alice Lucas)

116 Written evidence from Refugee Rights Europe ([AIP0009](#))

117 Written evidence from the British Red Cross ([AIP0008](#)) and the Refugee Council ([AIP0003](#))

- continued UK participation in international dialogues with European and African partners, frameworks, and processes, such as the Rabat and Khartoum Processes, to tackle illegal migration upstream; and
 - the option to align and work together on potential future funding instruments.¹¹⁸
122. Few of these ambitious objectives have been reflected in subsequent publications. The November 2018 Political Declaration on the future UK-EU relationship made no mention of asylum cooperation and contained only a short section on illegal migration.¹¹⁹ The UK Government’s December 2018 Immigration White Paper referenced its intention to negotiate:
- a new legal framework to return asylum seekers to EU countries they have travelled through, or have a connection with, to have their protection claim considered;
 - an agreement under which unaccompanied asylum-seeking children in the EU can join close family members in the UK, and *vice versa*, where it is considered to be in their best interest.¹²⁰
123. While acknowledging its flaws, Rossella Pagliuchi-Lor said UNHCR hoped that the Dublin System would be the basis for future UK-EU asylum cooperation:
- “[Dublin] is a solid framework. We believe that there would be an interest for all parties concerned in using it as a basis for further negotiation ... It is not just about pushing responsibility away; it is about determining where responsibility lies. That is an important element. It is also a way of ensuring that certain legitimate concerns of claimants, such as family reunion, are properly taken into account in the decision on where claims ought to be examined.”¹²¹
124. Prof Ryan and Alan Desmond thought that the terms for asylum cooperation after Brexit should be set out in a UK-EU association agreement.¹²² Relevant articles in the EU’s association agreements with States that border the EU could provide an “initial option”, but the UK’s existing participation in

118 Q 33 (Colin Yeo) and HM Government, *The future relationship between the United Kingdom and the European Union*, p 70 (12 July 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/786626/The_Future_Relationship_between_the_United_Kingdom_and_the_European_Union_120319.pdf [accessed 9 August 2019]

119 HM Government, *Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom*, (25 November 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759021/25_November_Political_Declaration_setting_out_the_framework_for_the_future_relationship_between_the_European_Union_and_the_United_Kingdom_.pdf [accessed 9 August 2019]

120 Home Office, *The UK’s future skills-based immigration system* (19 December 2018) p 78: <https://www.gov.uk/government/publications/the-uks-future-skills-based-immigration-system> [accessed 9 August 2019]

121 Oral evidence taken on 6 February 2019 (Session 2017–19), Q 3 (Rossella Pagliuchi-Lor)

122 We considered the possibility of basing the future UK-EU relationship on an association agreement in Chapter 4 of our report: European Union Committee, *UK-EU relations after Brexit* (17th Report, Session 2017–19, HL Paper 149)

CEAS measures pointed to “the desirability of more specific and developed provision being made” for UK-EU asylum cooperation.¹²³

The ‘Norway model’

125. Based on the objectives for future UK-EU asylum cooperation set out in the July 2018 White Paper on the future relationship, Dr Zaun drew our attention to Norway’s relationship with the CEAS as an “interesting” potential model for future UK-EU asylum cooperation.¹²⁴

Box 5: Norway’s position in the CEAS

In 1950 a Nordic passport union, abolishing internal border checks, was established to facilitate cross-border travel between Norway, Sweden, Finland, Denmark and Iceland. To maintain this union after Sweden, Finland and Denmark joined the EU, Iceland and Norway reached agreements to become associated members of the Schengen Area. As such, Norway has a responsibility to uphold the EU’s external borders, and participates in relevant legislation including the EU Returns Directive.

With regard to the CEAS, Norway has agreed to apply the Dublin and Eurodac Regulations, but is not bound by the Directives on asylum procedures, qualification, reception conditions, or temporary protection. Nonetheless, Norway is required to remain broadly compliant with EU asylum rules, and it has sought to harmonise with EU standards to avoid ‘pull factors’, which might make it a more attractive destination to asylum seekers than EU Member States. Norway has also been involved in the development of EASO.

As a non-Member State, Norway is not part of negotiations on CEAS proposals, but participates in asylum-related EU summits and meetings by invitation.

Source: Jan-Paul Brekke & Anne Staver, ‘The renationalisation of migration policies in times of crisis: the case of Norway’, Journal of Ethnic and Migration Studies, vol. 44, (2018), pp 2163–2181: <https://www.tandfonline.com/doi/full/10.1080/1369183X.2018.1433026> [accessed 20 August 2019]

126. Prof Ryan and Alan Desmond, however, did not think that the UK would be in a comparable position to the non-EU, Schengen-associated States after Brexit: “Those states are covered by Dublin and Eurodac arrangements for reasons of functional necessity, rather than as a policy choice (as it would be in the case of the UK).”¹²⁵
127. The differences between the circumstances of Norway and a post-Brexit UK were also highlighted during the Committee’s visit to Oslo in June 2019. In particular, it was suggested that the political imperative of the 2016 referendum for less alignment with the EU would make the UK unlikely to embrace Norway’s approach of ‘decision shaping, not decision making’. The tendency in the UK to conflate asylum pressures with EU freedom of movement was also contrasted with Norway, where migration concerns could

123 Written evidence from Professor Bernard Ryan & Alan Desmond (AIP0006). As examples, Prof Ryan and Alan Desmond noted that Article 16 of the 2014 EU association agreement with Ukraine envisaged “cooperation on migration, asylum and border management”, and provided that cooperation should focus *inter alia* on “establishing a comprehensive dialogue on asylum issues and in particular on matters relating to the practical implementation of the UN Convention of 1951 relating to the Status of Refugees and the Protocol relating to the Status of Refugees of 1967 and other relevant international instruments, as well as ensuring the respect of the principle of ‘non-refoulement’”. They noted similar provisions were included in the EU’s association agreements with Bosnia and Herzegovina and Serbia.

124 Oral evidence taken on 6 February 2019 (Session 2017–19), Q 3 (Dr Natascha Zaun)

125 Written evidence from Professor Bernard Ryan & Alan Desmond (AIP0006)

be controversial but were largely seen as a national rather than a European issue.¹²⁶

Priorities for future cooperation

Standards of protection

128. For the Refugee Council, minimum standards were “an essential prerequisite for any negotiations on a framework for future [asylum] cooperation”. Without them, they saw a risk that “basic levels of treatment would be levelled down to achieve a new legal agreement”.¹²⁷
129. Rossella Pagliuchi-Lor also found it difficult to imagine a future UK-EU asylum cooperation agreement that was not “underpinned by a shared understanding of ... minimum standards”. This alignment should not be at the “lowest common denominator”, but should “truly embody the spirit and the letter” of the Refugee Convention and ECHR.¹²⁸
130. Prof Ryan and Alan Desmond suggested:

“The UK may wish to guarantee future alignment in standards of protection and assistance, as part of the negotiations on a new legal framework for future UK-EU asylum cooperation. In particular, that would tend to strengthen the case for its continued participation in the Dublin System and the EU’s Asylum and Migration Fund.”¹²⁹

Dublin and Eurodac

131. The reunion of separated refugee families was the primary concern for witnesses in considering the UK’s future relationship with the Dublin System. Refugee Rights Europe noted that the EU (Withdrawal) Act 2018 committed the UK Government to seek an agreement with the EU to facilitate family reunion for unaccompanied asylum-seeking children (see Box 6). They called on the Government to ensure that this agreement was “urgently negotiated, within a specified timeframe to ensure that refugee children [were] not left trapped in potentially harmful environments”.¹³⁰

126 See Appendix 4 to this report, in particular, notes from the meetings with the Ministry of Justice and Heidi Nordby Lunde MP.

127 Written evidence from the Refugee Council ([AIP0003](#))

128 Oral evidence taken on 6 February 2019 (Session 2017–19), [Q 4](#) (Rossella Pagliuchi-Lor)

129 Written evidence from Professor Bernard Ryan & Alan Desmond ([AIP0006](#))

130 Written evidence from Refugee Rights Europe ([AIP0009](#))

Box 6: Section 17 of the European Union (Withdrawal) Act 2018

During the passage of the Bill, Lord Dubs tabled an amendment to insert a new clause requiring the Government to try to negotiate to maintain the arrangement whereby unaccompanied child refugees in one EU Member State are able to join relatives in another. This amendment passed in the House of Lords, and both Houses eventually accepted a Government amendment, which became section 17 of the EU (Withdrawal) Act 2018:

Family unity for those seeking asylum or other protection in Europe

1. A Minister of the Crown must seek to negotiate, on behalf of the United Kingdom, an agreement with the EU under which, after the United Kingdom's withdrawal from the EU, in accordance with the agreement—
 - (a) an unaccompanied child who has made an application for international protection to a member State may, if it is in the child's best interests, come to the United Kingdom to join a relative who—
 - (i) is a lawful resident of the United Kingdom, or
 - (ii) has made a protection claim which has not been decided, and
 - (b) an unaccompanied child in the United Kingdom, who has made a protection claim, may go to a member State to join a relative there, in equivalent circumstances.

Source: *European Union (Withdrawal) Act 2018, section 17* and Institute for Government, 'What is the current progress of the EU Withdrawal Bill?' (21 June 2018): <https://www.instituteforgovernment.org.uk/explainers/eu-withdrawal-bill-amendments-and-debates> [accessed 20 August 2019]

132. The British Red Cross welcomed section 17, but argued that its scope should be expanded to maintain all family reunion routes currently available under the Dublin III Regulation.¹³¹
133. ECRU and Liverpool Law Clinic said: "Any attempts to level down to the requirements for family unity under UK immigration law more generally should be strongly resisted".¹³² Safe Passage agreed that existing Dublin III family reunion rules should be regarded as minimum standards in any future UK-EU asylum cooperation agreement. In particular they argued that:
 - Unaccompanied minors should be able to reunite with parents, siblings, aunts, uncles or grandparents in the UK.
 - The best interests of the child should be the primary consideration in any family reunion application.
 - Family reunion transfers should not exceed existing time limits (as set out in the Dublin III Regulation).
 - Authorities should be required to share appropriate and relevant information to enable the swift determination of a family link.¹³³

¹³¹ Written evidence from the British Red Cross (AIP0008)

¹³² Written evidence from the European Children's Rights Unit and Liverpool Law Clinic (AIP0007)

¹³³ Written evidence from Safe Passage (AIP0005 and AIP0011)

In oral evidence, Eleanor Harrison stressed the importance of the first of these points:

“You might feel, ‘I can understand that it’s in the best interests of the child if we’re reuniting them with a parent, for example, but maybe it’s not so important if it’s an aunt’, but often these people have come on very perilous journeys. We have certainly had to deal with people who have lost family members on the way; they did not start out as an unaccompanied minor but lost family members in the Mediterranean, and their last living relative might be an aunt or uncle in the UK. That shows you how important it is to have that family link rather than leaving a child unaccompanied and without parents in Greece.”¹³⁴

134. Dr Zaun believed that the UK would have an interest in replicating the Dublin System beyond simply its family reunion provisions—and seeking continued access to the Eurodac fingerprint database—in order to achieve its objective of being able to send asylum seekers back to the first European country they entered.¹³⁵

135. Colin Yeo agreed that the UK would need access to Eurodac to have “meaningful cooperation about accepting or removing people from the EU”, as it would be “very difficult to match people or to check identity without ready access to it”. But he added:

“I do not know how realistic it is for the UK to get access to Eurodac, which is not a static thing. It is something that the EU is developing over time and there are plans to expand it away from being just about asylum to other types, such as irregular migration, and perhaps regular migration ... Whether that is realistic when the UK is pulling out of the rest of the system is a bit of an open question.”¹³⁶

136. On the other hand, Rossella Pagliuchi-Lor saw no reason why the UK should not be able to seek to negotiate continued access to Eurodac. As a “common-sense statement”, it would be in the UK and the EU’s interests for the database to be “used, accessed and fed by a larger number of participants rather than a smaller number.”¹³⁷

Other measures

137. Refugee Rights Europe highlighted other measures they thought should form part of any future UK-EU asylum cooperation agreement, including:

- the development of a well-functioning, sufficiently resourced operational plan for search and rescue missions in the Mediterranean (including unequivocal human rights accountability for implementing parties);

134 [Q 15](#) (Eleanor Harrison)

135 Oral evidence taken on 6 February 2019 (Session 2017–19), [QQ 6](#) and [10](#) (Dr Natascha Zaun)

136 [Q 33](#) (Colin Yeo)

137 Oral evidence taken on 6 February 2019 (Session 2017–19), [Q 10](#) (Rossella Pagliuchi-Lor)

We discuss the feasibility of the UK maintaining access to EU justice and home affairs databases (and related data protection implications) in our previous reports European Union Committee, [BrexIt: future UK-EU security and police cooperation](#) (7th Report, Session 2016–17, HL Paper 77) and [BrexIt: the proposed UK-EU security treaty](#) (18th Report, Session 2017–19, HL Paper 164)

- continued UK participation in the EU network of immigration liaison officers (ILOs), with a stronger role and mandate for UK ILOs, particularly in the Pas-de-Calais region.¹³⁸

138. Public Health England emphasised the importance of ensuring that any UK-EU cooperation agreement should work towards a health-sensitive asylum system, including pre-departure health assessments for asylum seekers being transferred to the UK from an EU country; specified protocols for health assessments, in line with the UK's refugee resettlement schemes; and fulfilment of safeguarding requirements for vulnerable asylum seekers, such as unaccompanied children.¹³⁹

Key factors

139. Witnesses highlighted various factors which could influence negotiations on a future UK-EU asylum cooperation agreement, key among which was the possible establishment of an EU 'responsibility (or burden) sharing' mechanism to relocate asylum seekers from Member States facing high numbers of arrivals (as envisaged in the proposed Dublin IV Regulation).
140. Although the UK Government has declined to opt into any negotiations on a responsibility sharing mechanism, some witnesses believed that the UK should be prepared to participate in a Europe-wide policy, and to take its 'fair share' of asylum seekers rather than letting the burden fall on countries like Germany, Sweden, Italy and Greece. Refugee Rights Europe thought that the UK should also be prepared to waive the criterion for the first EU country an individual entered to take responsibility for their asylum claim, in order to "alleviate disproportionate pressure on EU front-line states and ensure a more even distribution of asylum claims across Europe".¹⁴⁰
141. Jon Featonby pointed out that the EU itself was "struggling to get to grips with exactly what it [wanted] its own policies and procedures to look like".¹⁴¹ As we noted at paragraph 32, EU States do not agree on what constitutes 'responsibility sharing' with regard to asylum seekers, and plans to establish a mechanism to relocate asylum seekers across the EU in the Dublin IV Regulation have stalled negotiations on the entire package of CEAS reforms proposed in 2016.
142. Dr Beirens believed that this question would "determine the relationship and the cooperation agreements that will be struck with the UK", not least because the EU would not want to "send out mixed signals" to Member States in the Visegrád group (who have opposed responsibility sharing) on its expectations in this area. Nevertheless, Dr Beirens thought that the UK might conclude it had an interest in participating in such measures after Brexit, either to show solidarity with EU Member States facing disproportionate pressures or to secure access to other EU Justice and Home Affairs cooperation tools. Dr Beirens suggested that the UK was in a "weaker bargaining position" than the EU in seeking to negotiate an agreement on returns, as it had historically made more requests for EU Member States to take back asylum seekers than the other way around. As such, if the UK wanted to secure a follow-up

138 Written evidence from Refugee Rights Europe ([AIP0009](#))

139 Written evidence from Public Health England ([AIP0004](#))

140 See for example [Q 17](#) (Lord Dubs), [Q 23](#) (Alice Lucas) and written evidence from Refugee Rights Europe ([AIP0009](#)).

141 [Q 7](#) (Jon Featonby)

to Dublin returns procedures, it would have to put “other, much broader, bargaining chips on the table”.¹⁴²

143. Dr Zaun acknowledged the UK’s concerns regarding Dublin IV, suggesting that the UK could wait until after it was agreed before deciding whether to try to re-join the Dublin System. She thought that Dublin IV would probably end up containing voluntary forms of responsibility sharing, rather than a mandatory corrective allocation mechanism. This could be acceptable to the UK, showing “good will for future cooperation with the EU”, while allowing it to decide how many asylum seekers to take.¹⁴³
144. On the other hand, Prof Guild suggested that the flaws of the Dublin System could limit the options for UK participation:

“If we cannot even have a system of distribution of asylum seekers within the EU among States that, at least in theory, are tied to one another, the chances of sending them to third countries will be much diminished.”¹⁴⁴

Other factors

145. Dr Zaun suggested that EU law was developing in the direction of allowing child refugees to sponsor their parents to join them, and the EU might expect the UK to liberalise its position on family reunification along these lines as well.¹⁴⁵
146. ECRU and Liverpool Law Clinic told us that the UK would have to demonstrate that it could offer adequate minimum standards to secure continued participation in the Dublin System. In doing so, the UK would need to address the “significant gaps” between the standards of protection for asylum seekers set out in UK law and those delivered in practice.¹⁴⁶
147. Finally, ILPA questioned the extent to which the UK could pursue any kind of engagement with the CEAS while “simultaneously abrogating the jurisdiction of the CJEU”.¹⁴⁷

Bilateral cooperation

148. As we noted in paragraph 86, a number of bilateral agreements between the UK and EU Member States such as France and Belgium underpin cooperation on border management. Witnesses were clear that this bilateral cooperation was central to the effective management of asylum flows. There was no consensus, however, on the question of whether new bilateral asylum cooperation agreements—or the reinforcement of existing agreements—would be necessary or desirable after Brexit.

149. Prof Guild told us:

“I really think that the Le Touquet agreement is as far as you can go ... I very much doubt that outside the EU framework the UK will be able to negotiate anything further to accommodate diminishing flows of persons. Practically, one sees it as a very difficult scenario.”

142 [QQ 18–28](#) (Dr Hanne Beirens)

143 Oral evidence taken on 6 February 2019 (Session 2017–19), [Q 3](#) and [Q 9](#) (Dr Natascha Zaun)

144 [Q 33](#) (Professor Elspeth Guild)

145 Oral evidence taken on 6 February 2019 (Session 2017–19), [Q 8](#) (Dr Natascha Zaun)

146 Written evidence from the European Children’s Rights Unit and Liverpool Law Clinic ([AIP0007](#))

147 Written evidence from the Immigration Law Practitioners’ Association ([AIP0002](#))

Developing this point, Prof Guild explained that, to France, the Calais situation was an exception that did not occur on its borders with any other EU Member State. For France, the lifting of border controls through membership of the Schengen Area was the best way not to have “people living in squalid conditions, seeking to try to cross a border that they cannot get across”. Colin Yeo agreed that the UK got “quite a good deal out of the current arrangements”, and said it was “hard to see what the French would gain from any possible UK asks” to develop them further.¹⁴⁸

150. The Refugee Council envisaged future bilateral agreements that would “genuinely prioritise protection [for asylum seekers] over security concerns”.¹⁴⁹ Alice Lucas agreed, arguing that the situation in northern France showed current approaches were not working: the French asylum system was overstretched, there were numerous reports of police violence, and people were left without access to shelter or healthcare.¹⁵⁰
151. Refugee Rights Europe called for the UK to work with France to find an effective resolution to this situation, “rather than contributing further ... funding towards heightened securitisation in the area”. They believed future cooperation should include, but not be limited to:
- funding for the deployment of specialist Home Office caseworkers to northern France to support the identification and transfer of displaced children and asylum seekers eligible for family reunion in the UK;
 - the UK refraining from returning asylum seekers crossing the Channel from France without having first assessed their asylum claims and the individual circumstances of applicants in line with the Refugee Convention.¹⁵¹
152. Noting the recent UK commitment of €50 million under the Sandhurst Treaty, Dr Beirens suggested that the Belgian Government would look to the UK for support to manage “problems in the Brussels-North station and people waiting in the coastal towns” to try to reach the UK.¹⁵²
153. Jan Bayart explained that action to dismantle the migrant camps in France had, to some extent, moved the problem of “transmigrants”—people seeking to travel through other countries to seek asylum in the UK—to Belgium. Mr Bayart said significant recent increases in the number of police interceptions of “people trying to infiltrate transport means or port zones in Belgium” had put a “considerable strain” on Belgian police and security services. He concluded:

“As both sides at the operational level have concluded that we face a joint challenge and that a joint effort is the best way to tackle it, there is a logical hope and expectation on the Belgian side that such a joint effort would extend to a joint financial effort—all the more so because we have noticed that such agreements have been reached between the United

148 [Q 35](#) (Colin Yeo, Professor Elspeth Guild)

149 Written evidence from the Refugee Council ([AIP0003](#))

150 [Q 25](#) (Alice Lucas)

151 Written evidence from Refugee Rights Europe ([AIP0009](#))

152 [Q 24](#) (Dr Hanne Beirens)

Kingdom and France and we think that we are as valuable a partner and friend to the UK as our French neighbours.”¹⁵³

An alternative to UK-EU cooperation?

154. Dr Zaun noted that, while bilateral arrangements on asylum responsibility had been suggested as an alternative to a UK-EU agreement, such an approach could face legal barriers. For example, EU Member States would not be allowed to conclude bilateral arrangements on responsibility sharing, as this was provided for under the Dublin System.¹⁵⁴
155. Prof Guild told us that Member States were allowed to enter into other bilateral arrangements on family reunion. Nonetheless, as the EU Family Reunification Directive established minimum standards for family reunification for refugees, any agreement between the UK and an EU Member State in this area would have to be consistent with the “threshold of rights” set out in the Directive.¹⁵⁵
156. Colin Yeo concluded:
- “In practical terms, even if you could negotiate a bilateral arrangement with another EU country that was compatible with EU law, it is rather laborious to do that with each country. It is far more efficient to enter into some sort of arrangement with the EU through the [CEAS].”¹⁵⁶

The Government’s view

157. Brandon Lewis MP, Minister of State for Security and Deputy for EU Exit and No Deal Preparation, confirmed: “We value close cooperation with the EU on asylum and migration matters, and we want that to continue”. The Minister told us that there was no precedent for a non-EU country outside the Schengen Area to participate in the Dublin Regulation. It might not be impossible to secure the UK’s continued participation in Dublin as a third country, but this was not the Government’s aim. Instead, the Government sought to negotiate a new reciprocal returns agreement—ideally underpinned by a system like Eurodac—to ensure that illegal migrants and asylum seekers could be returned to the country they entered the UK or EU from, or that they had a connection with (for example, a student visa). This, the Minister said, would “reflect the UK’s unique geographical position in relation to the EU, and the ongoing need for consistent messaging to migrants about secondary movements between the EU and the UK.”
158. The Minister suggested that Brexit provided an opportunity to achieve a “more effective and ambitious” agreement with the EU than the Dublin System, and was confident that the UK could negotiate a returns agreement including illegal migrants rather than just asylum seekers. This system might share some similarities with, but would not replicate, the Dublin System. The Government would, however, seek continued participation with Eurodac, EASO, and EUNAVFOR MED.

153 [QQ 49–50](#) (Jan Bayart). Mr Bayart told us that there were 7,000 interceptions in 2018 in the coastal province of western Flanders alone, which was an increase on 2016 and 2017 when Belgium first saw a surge in interceptions. In 2019, there have been an average 445 interceptions per month; even more than in the same months of 2018.

154 Oral evidence taken on 6 February 2019 (Session 2017–19), [Q 6](#) (Dr Natascha Zaun)

155 [Q 34](#) (Professor Elspeth Guild)

156 [Q 34](#) (Colin Yeo)

159. The Minister reiterated the Government's opposition to responsibility sharing with regard to the redistribution of asylum seekers across the EU. He did not expect the future UK-EU relationship to be underpinned by such a proposal, even in the case of a voluntary relocation programme.¹⁵⁷

Conclusions

UK-EU cooperation

160. **There is a clear shared interest in maintaining UK-EU asylum cooperation after Brexit, to support the effective management of regional migration flows in Europe. Properly managed migration will also ensure that asylum seekers and refugees—some of the most vulnerable groups in society—can continue to exercise their right to claim asylum, and receive adequate protection and integration in a timely and humane way.**
161. **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.**
162. **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.**
163. **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.**
164. **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**

¹⁵⁷ Letter dated 10 September 2019 from Rt Hon Brandon Lewis MP to Lord Jay of Ewelme (see Appendix 7)

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 UK-EU asylum cooperation prove more difficult or time consuming to negotiate.

165. 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.
166. In so doing, the UK would demonstrate solidarity, good will, and a willingness to play its part in managing migration flows across the continent. This in turn would help the UK to achieve its objective of securing an agreement to return asylum seekers to their first point of entry to the EU.

Bilateral cooperation

167. 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.
168. 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.
169. 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.
170. Bilateral relationships are important in managing migration flows, but they cannot replicate the level of cooperation the Government has said it would like to maintain with the EU after Brexit. 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.

CHAPTER 5: FUTURE UK ASYLUM POLICY

171. In undertaking this inquiry, we set out to explore the implications of Brexit for UK asylum policy, and the potential framework for future UK-EU asylum cooperation. But we also received a substantial amount of evidence on the operation of the UK asylum system, independent of any Brexit considerations.
172. In December 2018, the Government published a White Paper setting out its vision for the post-Brexit UK immigration system—including asylum and refugee resettlement—and launched a year-long consultation on these proposals.¹⁵⁸ In this context, in this Chapter we consider the evidence we heard on the shortcomings of the UK asylum system, and on priorities for its future improvement.

Criticisms of the UK asylum system

Family reunion

173. In 2016, in response to concerns raised by stakeholders in the asylum and refugee sector, the UK Independent Chief Inspector of Borders and Immigration, David Bolt, undertook an inspection of the process for family reunion applications. Overall, the inspection found that the Home Office was too ready to refuse family reunion applications on the basis of insufficient evidence, when giving the applicant more time to produce more evidence might have been a fairer and more efficient approach.¹⁵⁹
174. In evidence, David Bolt explained that his inspection report had made ten recommendations to improve the Home Office’s handling of family reunion cases. A particular concern had been that the Department had handled family reunion applications as if they were visit visa applications:

“It seemed that that was missing the point of what family reunion applications were all about. Essentially these were asylum-related and humanitarian protection cases, which required a different sort of approach. The readiness to refuse came from seeing them as the wrong thing.”

Mr Bolt noted that the Home Office immediately issued a revision to its guidance on family reunion, which “appeared to make an improvement”. Despite this, follow-up inspections revealed that improvements to other aspects of the family reunion process had not moved on as he had hoped.¹⁶⁰

175. Evidence from other witnesses shows that stakeholders continue to have significant concerns over the process for reuniting refugee families in the UK.

158 HM Government, *The UK’s future skills-based immigration system*, Cm 9722, 17 December 2018: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766465/The-UKs-future-skills-based-immigration-system-print-ready.pdf [accessed 21 August 2019]

159 Independent Chief Inspector of Borders and Immigration, *An inspection of family reunion applications: January to May 2016* (September 2016) p 2: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/561815/ICIBI-inspection-of-family-reunion-applications-January-to-May-2016.pdf [accessed 21 August 2019]

160 [Q 40](#) (David Bolt)

Eligibility criteria

176. As noted above (paragraph 40), under UK family reunion rules, refugees are only able to sponsor their spouse or same sex partner and dependent minor children to join them in the UK; refugee children are not allowed to act as sponsors.
177. The Refugee Council said that restrictions on children sponsoring family members meant the UK had failed to provide for the best interests of child refugees, “ignoring the potential integration support that family unity can provide, and condemning some individuals to never see family members again”.¹⁶¹ Judith Dennis told us that NGOs and other EU Member States were “shocked, surprised and horrified” by the UK’s policy to prevent family reunification for unaccompanied children recognised as refugees, who could not safely go back to their country of origin.¹⁶²
178. Jon Featonby told us that refugee families were put in difficult positions by the inflexibility of UK family reunion rules:

“We have seen parents able to bring over maybe their wife and two children under 18 but facing a very difficult decision about what they might do with their 18- or 19-year-old daughter, who would not necessarily fit within those rules but is completely dependent on that family unit and might have to be left somewhere quite dangerous overseas.”¹⁶³

179. Rossella Pagliuchi-Lor also criticised the lack of provision to extend the right of family reunification to dependent adults: “What family would leave behind an 18-year-old, particularly in countries where a single woman not protected by her family is often in serious jeopardy?”¹⁶⁴

Evidence requirements

180. Safe Passage said that evidential requirements continued to be a problem in family reunion applications, arguing that the Home Office applied “an excessively high standard of proof” and failed to “appropriately assess the evidence available”. This frequently resulted in cases of family reunion applications being denied, “citing insufficient evidence regarding the family link, only to be subsequently accepted after a lengthy re-examination process”.¹⁶⁵
181. Eleanor Harrison explained:

“We are finding that the Home Office ... is using very small differences to argue that there is no evidence. For example, there can be differences in names on paperwork. This can happen because there are many transliterations of people’s names from sending to receiving states ... Children often do not have access to an interpreter or do not understand the language a date of birth is being registered in. That has been used to reject people.”¹⁶⁶

161 Written evidence from the Refugee Council ([AIP0003](#))

162 [Q 9](#) (Judith Dennis)

163 [Q 9](#) (Jon Featonby)

164 Oral evidence taken on 6 February 2019 (Session 2017–19), [Q 8](#) (Rossella Pagliuchi-Lor)

165 Written evidence from Safe Passage ([AIP0005](#))

166 [Q 13](#) (Eleanor Harrison)

182. ECRU and Liverpool Law Clinic told us that, in some cases, litigation had been required to “persuade the Home Office to carry out its duty of investigation” of evidence on family links.¹⁶⁷

Other issues

183. Safe Passage noted that the Home Office regularly exceeded the time limits set out in the Dublin Regulation for family reunion transfer cases. They argued that these delays compounded the trauma that vulnerable child refugees had already experienced, “contributing to a significant and long-lasting impact on [their] mental and physical health”. In the case of one young refugee supported by Safe Passage, delays in processing a take charge request from France had led to the boy becoming street homeless, contracting tuberculosis and pneumonia, and being diagnosed with PTSD.
184. Safe Passage also criticised the Home Office’s communication with applicants for family reunion, suggesting that children and family members were not being given the opportunity to respond to negative decisions or provide further supportive evidence and information.¹⁶⁸

Unaccompanied children

185. ECRU and Liverpool Law Clinic said that the UK’s approach to protecting unaccompanied children had been “half-hearted”, noting the Government’s failure to establish a guardianship scheme and provide comprehensive protections in domestic legislation for these children. They were also concerned by “worrying gaps in both the availability and quality of specialist immigration legal advice and support” for unaccompanied children, and by the lack of compulsory training to equip lawyers in the UK to work with vulnerable child refugees.¹⁶⁹

General criticisms

Inefficiency

186. Jon Featonby explained the dramatic impact of inefficiency in the UK asylum system upon refugees:

“From the British Red Cross perspective, one of our main challenges is destitution within the asylum and refugee system ... Quite often they have fallen destitute because of a lack of joined-up thinking across government, particularly when people move from the asylum system and receive support from the Home Office. Once they are granted refugee status, they then get 28 days to transition to mainstream forms of support. In our experience, too often it is not long enough.”¹⁷⁰

187. Eleanor Harrison and Lord Dubs cited the Government’s failure to reach its target for resettlement through the Dubs scheme as another example of inefficiency. Lord Dubs told us that the Government had been slow to get the scheme off the ground, and that only 220 children had arrived so far. While the Home Office has cited problems in finding local authorities willing to take ‘Dubs children’, Eleanor Harris told us that Safe Passage had proactively contacted local authorities in 2019 and found that they were

167 Written evidence from the European Children’s Rights Unit and Liverpool Law Clinic ([AIP0007](#))

168 Written evidence from Safe Passage ([AIP0005](#) and [AIP0011](#))

169 Written evidence from the European Children’s Rights Unit and Liverpool Law Clinic ([AIP0007](#))

170 [Q 4](#) (Jon Featonby)

willing to provide resettlement places, but that there seemed to be “a lack of political will or urgency on behalf of the Home Office”.¹⁷¹

A two-tier system?

188. Reflecting on the success of the Syrian Vulnerable Persons Resettlement Scheme (VPRS), Jon Featonby regretted that lessons had not been carried across to the asylum process for people applying for protection on arrival in the UK. This had created a “two-tier support system”, where people resettled through VPRS received more funding for integration and support, including English language classes, than people coming through the asylum system.¹⁷²
189. Eleanor Harrison said that the same was true for children, as local authorities received just over £25,000 over five years to support a child with a family who arrived through a resettlement scheme, but were not eligible for the same financial support for unaccompanied children who arrived in the UK spontaneously.¹⁷³
190. David Bolt agreed that there was a two-tier system, which made it “much more challenging to try to get local authorities to take” refugees who had not arrived through a resettlement programme. He concluded: “Where there is a financial incentive, it is clearly more likely that you will get some take-up from the local authority than when they see it just as a burden and a cost.”¹⁷⁴

Timing of integration support

191. Jon Featonby described the support provided by the British Red Cross to refugee families being resettled in the UK, but noted: “None of that preparation can start until the family is here.” Ideally, learning and preparation for integration should begin earlier, before families arrive in the UK.¹⁷⁵
192. David Bolt noted that—during the 35 weeks it took between a decision to resettle someone through VPRS and the person actually being brought to the UK—refugees only received one two-day integration workshop. Mr Bolt saw this as a “significant missed opportunity”: there were “many, many weeks when you might be able to give someone English-language training”, putting them in a better position to find work and access other services when they arrived in the UK.¹⁷⁶

Other issues

193. ECRU and Liverpool Law Clinic said that cuts in legal aid had limited the availability of “appropriately qualified and sufficiently experienced legal support” for asylum cases. While asylum claims were eligible for legal aid funding, the withdrawal of legal aid from other areas of immigration casework had reduced the number of lawyers prepared to take on such work. This had added to the pressures on “an already over-burdened minority of specialists in the not-for-profit sector” and had increased the number of asylum cases allocated to “underqualified non-specialists”.¹⁷⁷

171 [Q 11](#) (Lord Dubs, Eleanor Harrison)

172 [Q 5](#) (Jon Featonby)

173 [Q 11](#) (Eleanor Harrison)

174 [Q 42](#) (David Bolt)

175 [Q 5](#) (Jon Featonby)

176 [Q 41](#) (David Bolt)

177 Written evidence from the European Children’s Rights Unit and Liverpool Law Clinic ([AIP0007](#))

194. The Refugee Council noted that the UK was the only country in Europe not to have a maximum time-limit for immigration detention. Thousands of people were detained each year, costing £100 million annually, and affecting the health and wellbeing of detainees.¹⁷⁸ Jon Featonby told us that the indefinite nature of immigration detention was “one of the most harmful things” about this policy, noting that some people had “been in detention for a number of months, if not years”.¹⁷⁹

Rhetoric

195. Several witnesses also criticised the rhetoric used to describe asylum seekers in the UK, including by the Government. Refugee Rights Europe, for example, noted a trend among Government departments to refer to asylum seekers as an “influx of migrants”, feeding into a “harmful and largely questionable dichotomy between the ‘deserving refugee’ and ‘undeserving migrant’”. Refugee Rights Europe called on the Government to underline publicly the inalienable right of all people to have their asylum claim assessed, regardless of their country of origin or the means by which they travelled to the UK.¹⁸⁰
196. Judith Dennis shared these concerns, noting:

“We cannot judge whether somebody is in need of protection when they are in the middle of the English Channel, for instance. We should probably do more in solidarity with others. In 2015, when people talked about a refugee crisis, it was just that the crisis had reached our doorstep ... We also need to speak about asylum as something that we should be proud of, not something to fear.”¹⁸¹

197. The Norwegian Refugee Council (NRC) commented on the UK Government’s unwillingness publicly to acknowledge the support it provided as a partner on asylum and migration issues at the international level. This unwillingness, combined with negative political rhetoric around asylum seekers at the national level, meant that the UK had lost its moral authority on asylum cooperation internationally. More broadly, the NRC considered that the general unwillingness of governments across Europe to frame the granting of asylum to people in desperate situations as something to be proud of had given a free platform to anti-migration voices to depict asylum seekers as a threat and something to fear.¹⁸²

Improving the UK’s asylum system

198. Several witnesses commented on the opportunity provided by Brexit for a holistic re-examination of the UK’s asylum system, and expressed disappointment at the lack of detail in the Government’s 2018 Immigration White Paper. Jon Featonby described the White Paper as “underwhelming”, while Alice Lucas noted that it only devoted a few pages to asylum issues. Refugee Rights Europe were frustrated by the Government’s failure to engage with refugee and asylum stakeholders in developing its proposals, and by the lack of clarity on how and to what extent the Government would now consult civil society on those sections of the White Paper relating to

178 Written evidence from the Refugee Council ([AIP0003](#))

179 [Q 9](#) (Jon Featonby)

180 Written evidence from Refugee Rights Europe ([AIP0009](#))

181 [Q 4](#) (Judith Dennis)

182 See Appendix 4.

refugees.¹⁸³ Witnesses also made various suggestions for improvements to the UK’s asylum system.

Family reunion

199. The NGOs who gave evidence were all members of the Families Together coalition, which seeks to achieve an expansion of the UK’s refugee family reunion rules, and they drew our attention to a number of key demands:
- (a) Giving child refugees in the UK the right to sponsor their parents and siblings under the age of 25;
 - (b) Expanding the definition of who qualifies as family so that adult refugees in the UK can sponsor their adult children, siblings under the age of 25, and their parents;
 - (c) The reintroduction of legal aid.¹⁸⁴
200. UNHCR is also a member of this coalition, and Rossella Pagliuchi-Lor expressed disappointment that the Immigration White Paper maintained the Government’s position that allowing child refugees to sponsor their parents could create incentives for children to be “encouraged, or even forced, to leave their family and risk hazardous journeys to the UK”. She commented:
- “We have not found hard evidence that that is the case; there does not seem to be a correlation between children going to a country and that country’s practice with regard to family reunion.”¹⁸⁵
201. We reached a similar conclusion in our 2016 report on unaccompanied migrant children in the EU, finding that some children were in fact reluctant to seek family reunification for fear that it might place their family members in danger. We recommended that the Government reconsider its restrictive position on family reunion, and that it should make legal aid available to unaccompanied children for family reunification proceedings.¹⁸⁶ The Government has failed to act on these recommendations.
202. In that report, we also called on the Government to establish a guardianship service in England and Wales for all unaccompanied children, to oversee their participation in the asylum process and identify each child’s best interests. This recommendation was supported by several witnesses in our current inquiry. The Refugee Council, for example, noted that unaccompanied children seeking asylum in Scotland and Northern Ireland had access to independent guardians, but that an equivalent service was only available to children in England and Wales who had experienced modern slavery. They believed that all unaccompanied children should be appointed a guardian, and such guardians “should also have the statutory power to intervene when

183 Q 4 (Jon Featonby), Q 29 (Alice Lucas) and written evidence from Refugee Rights Europe (AIP0009)

184 Written evidence from the Refugee Council (AIP0003), Safe Passage (AIP0005), British Red Cross (AIP0008) and SOS Children’s Villages UK (AIP0012)

185 Oral evidence taken on 6 February 2019 (Session 2017–19), Q 8 (Rossella Pagliuchi-Lor) and Home Office, *The UK’s future skills-based immigration system*, Cm 9722, 19 December 2018, p 79: <https://www.gov.uk/government/publications/the-uks-future-skills-based-immigration-system> [accessed 9 August 2019]

186 European Union Committee, *Children in crisis: unaccompanied migrant children in the EU* (2nd Report, Session 2016–17, HL Paper 34), para 291

a child is not receiving the care and support, including access to education, that they are entitled to in law”.¹⁸⁷

203. Lord Dubs also supported a guardianship system, but reported concerns expressed by local authorities about the strain this could put on resources:

“As I understand it, in Northern Ireland the guardians are qualified social workers with about five years’ experience, a scarce type of skill ... When I put it to a local authority leader in London, the answer was that they do not have enough good social workers with that experience to spare ... In short, the principle of the guardians is a good one. They need to be qualified, but we do not seem to have the resources for that at the moment.”¹⁸⁸

204. Eleanor Harrison argued that funding for guardians should be provided by central Government, not local authorities. She suggested that this approach could save costs “later down the line”, for example, by avoiding mistakes in a child’s best interests assessment and ensuring that their need for services like mental health support was not exacerbated by a lack of adequate support. As part of this, she said, Safe Passage was calling for “time-bound transition support packages, to provide [child refugees] and their families with financial and integration support until they are able to access other forms of benefits”.¹⁸⁹
205. ECRU and Liverpool Law Clinic highlighted an urgent need for “more rigorous training and capacity building” for legal practitioners working in the field of immigration and asylum, in particular to increase knowledge of the requirements of a children’s rights-based approach to legal practice among those representing vulnerable children.¹⁹⁰

SOGI asylum claimants

206. The SOGICA Project—a four-year research project on the social and legal experiences of people seeking asylum on the basis of their sexual orientation or gender identity (SOGI)—told us that there had not been adequate provision for the needs of SOGI asylum claimants under the UK or European asylum systems. They listed a number of recommendations to improve the care and protection of SOGI asylum seekers, including:
- The widespread provision of information to asylum applicants that persecution on SOGI grounds constitutes a legitimate basis for claiming international protection;
 - Acknowledgment of the special reception needs of SOGI claimants, for example, by expressly including SOGI claimants among those who require special guarantees and protection from hate crimes and by making provision for hormonal treatment as a material reception condition;¹⁹¹

187 Written evidence from the Refugee Council ([AIP0003](#))

188 [Q 12](#) (Lord Dubs)

189 [Q 12](#) (Eleanor Harrison) and written evidence from Safe Passage ([AIP0005](#))

190 Written evidence from the European Children’s Rights Unit and Liverpool Law Clinic ([AIP0007](#))

191 Material reception conditions are reception conditions provided to asylum applicants to ensure an adequate standard of living, which guarantees their subsistence and protects their physical and mental health, including for example, housing, food and clothing (provided in kind, or as financial allowances or vouchers) and expenses allowances.

- Mandatory SOGI training for asylum application interviewers and interpreters;
- Recognition of the fact that evidence of SOGI persecution is often difficult to document in terms of evidence in support of asylum applications;
- Inclusion of the likelihood of SOGI persecution in assessments of whether a country of origin is ‘safe’ for the purpose of returns, including internal relocation alternative returns.¹⁹²

Administrative improvements

207. Safe Passage said that a “greater degree of urgency should be underpinning the actions of the Home Office”, which should hold itself to “the highest possible standards by acting with speed and compassion” in handling family reunion transfer requests. Safe Passage called for clear procedures and guidelines confirming the rights of children and family members to information, the provision of sufficient and detailed reasoning when a transfer request is refused, and time limits for processing family reunion cases.¹⁹³
208. Dr Beirens told us that the UK should focus its efforts to improve implementation of the asylum system on “setting aside investment and human resources, training people and adapting procedures”. She pointed to the positive example of Sweden, Germany and The Netherlands, who had “drastically reviewed their asylum systems in the last couple of years to deal ... with how to process asylum claims more swiftly”.¹⁹⁴
209. Judith Dennis noted the difficulty of ensuring adequate standards of refugee protection when migration and refugee policies were all “part of the same basket”, with the prioritisation of border control likely to affect people in need of protection. The Refugee Council thought that a cross-departmental Refugee Minister could help to address these challenges, by championing the UK’s role in providing refuge for those in need of protection, and bringing departments together to provide joined-up support for refugees in the UK.¹⁹⁵

Resettlement

210. Several witnesses commented on the forthcoming end of the UK’s VPRS and VCRS refugee resettlement programmes. Praising these programmes, Judith Dennis and Jon Featonby hoped that lessons learned from them would feed into future resettlement schemes. They called for the refugee resettlement in the UK to be taken forward under one programme, with the following key features:
- a long-term commitment from the Government to providing the same level of support and funding available under VPRS and VCRS;

192 Written evidence from the SOGICA Project ([AIP0010](#))

Internal relocation (or flight) alternative is the idea that, rather than seeking asylum in another country, a person should relocate to a specific area of their country of origin where there is no risk of a well-founded fear of persecution and where they could reasonably be expected to establish themselves and live a normal life.

193 Written evidence from Safe Passage ([AIP0005](#))

194 [Q 28](#) (Dr Hanne Beirens)

195 [Q 4](#) (Judith Dennis)

- protection of the infrastructure, good practice, and expertise built up in local authorities through delivering the VPRS and VCRS;
- tailoring of integration support to people’s different vulnerabilities and needs;
- flexibility for local authorities in deciding how to spend funding for integration support;
- accessibility to refugees coming from all parts of the world;
- maintenance of the UNHCR’s role in identifying suitable candidates for resettlement in the UK.

Judith Dennis further noted that the funding available to local authorities supporting refugees, particularly unaccompanied children, should be consistent regardless of how they arrived in the UK and their age. Local authorities should be able to decide what kind of support to provide in the individual’s best interests without being influenced by different rates of funding.¹⁹⁶

211. David Bolt thought that clear ministerial direction and appropriate funding were the key ingredients of success for refugee resettlement. Mr Bolt suggested that the Government should also increase the number of areas in which asylum accommodation was available, to address “the concentration of asylum seekers or refugees in particular locations”.¹⁹⁷

Future targets for refugee resettlement

212. The British Red Cross and Refugee Council both argued that, for the UK to maintain its position as a global leader in refugee resettlement, future programmes should be more ambitious in terms of resettlement numbers. They called on the Government to commit to UNHCR’s suggested target of resettling 10,000 refugees in the UK each year.¹⁹⁸
213. As part of their Kindertransport Anniversary Campaign, Lord Dubs and Safe Passage called for the Government to mark the 80th anniversary of the Kindertransport—when the UK took in 10,000 unaccompanied children from Germany, Austria and Czechoslovakia between 1938–1939—by committing to resettle 1,000 refugee children per year, as part of the UNHCR’s overall annual target of 10,000.¹⁹⁹
214. During our inquiry, the Government announced a new global resettlement scheme, which would start in 2020 and consolidate the UK’s VPRS, VCRS, and gateway resettlement programmes. The new programme would aim to resettle 5,000 refugees in its first year, be simpler to operate than predecessor schemes, and provide greater consistency in the way the Government resettled refugees.²⁰⁰

196 Q 5 (Judith Dennis, Jon Featonby)

197 Q 42 (David Bolt)

198 Written evidence from the Refugee Council (AIP0003) and the British Red Cross (AIP0008)

199 Q 17 (Lord Dubs, Eleanor Harrison)

200 Home Office, ‘New global resettlement scheme for the most vulnerable refugees announced’ (17 June 2019): <https://www.gov.uk/government/news/new-global-resettlement-scheme-for-the-most-vulnerable-refugees-announced> [accessed 21 August 2019]

215. Prof Guild described the proposed target for the new UK resettlement programme as “pretty unambitious” and “a drop in the bucket”, in the context of approximately 70 million displaced people worldwide, but acknowledged it was “a good drop in the bucket”. Colin Yeo added: “It is not nothing: it is a big improvement on what we had before, when the numbers were much smaller. But it could be a lot more.”²⁰¹

External aspects

216. As noted above (paragraph 79), after Brexit the UK will no longer be covered by the EU’s Readmissions Agreements with third countries, which facilitate the return of non-EU nationals who do not have the legal right to stay in the EU, including rejected asylum seekers. Prof Ryan and Alan Desmond saw no objection to the UK negotiating new readmission agreements in its own right, subject to the following conditions:

- The State or territory in question must clearly be a safe country, both for its own nationals and for other persons returned there; and
- Readmission agreements should not be used to return persons with pending applications for international protection to other countries.²⁰²

217. ECRU and Liverpool Law Clinic suggested that the UK had “a record of dangerous removals” and stressed that future readmission arrangements must “adequately protect any persons subject to their terms” and meet the UK’s international obligations.²⁰³ Refugee Rights Europe agreed, arguing that the Government should carry out human rights impact assessments as part of negotiating readmissions agreements, and that agreements should incorporate conditions including respect for the principle of *non-refoulement*; access to a fair asylum procedure and right to effective remedy; access to information and legal assistance; safe and adequate reception conditions; access to family reunification procedures; and no risk of arbitrary detention.²⁰⁴

218. Refugee Rights Europe also argued that human rights impact assessments should be a key feature of EU or UK efforts to “externalise” migration management, by cooperating with third countries to prevent people from coming to Europe, or, to process asylum claims in ‘regional disembarkation centres’ outside Europe or ‘controlled centres’ within Europe.²⁰⁵

219. Colin Yeo went further, telling us that there were “very strong arguments” that a system of externalising migration management would be incompatible with the Refugee Convention, and so would face “legal obstacles”. He noted that the EU had been discussing such a policy for many years, and questioned whether it was closer to materialising now than before.²⁰⁶

220. Dr Beirens told us:

“The idea of controlled centres or temporary arrangements is under a lot of pressure and question ... neither construct has materialised for the moment. The African Union and the separate African countries have said, ‘One of those regional disembarkation centres will not be in my

201 [Q 38](#) (Colin Yeo, Professor Elspeth Guild)

202 Written evidence from Professor Bernard Ryan & Alan Desmond ([AIP0006](#))

203 Written evidence from the European Children’s Rights Unit and Liverpool Law Clinic ([AIP0007](#))

204 Written evidence from Refugee Rights Europe ([AIP0009](#))

205 Written evidence from Refugee Rights Europe ([AIP0009](#)) and [Q 21](#) (Dr Hanne Beirens)

206 [Q 36](#) (Colin Yeo)

back yard'. When it comes to controlled centres, that is also not being discussed for the moment. The principles underpinning it are still being discussed."²⁰⁷

The Norwegian asylum system

221. An overview of the Norwegian asylum system—based on the information we received during our visit to Oslo in June 2019 (see Appendix 4)—is set out below.

Routes to asylum in Norway

222. The number of people arriving to make asylum claims in Norway differs substantially from year to year. We heard that in 2018–19 numbers had been relatively low. Like the UK, Norway operates a resettlement programme, with refugees identified by UNHCR. Target numbers of refugees to be resettled through this programme are decided each year by the Storting (the Norwegian Parliament); the 2019 quota is 3,000 people.
223. Norway maintains a list of countries whose citizens are deemed to have no reason to need international protection, to facilitate the rapid identification and removal of ineligible asylum applicants. Asylum applications from citizens of countries on this list are prioritised to ensure those likely to receive a negative decision can be returned as quickly as possible.
224. For other cases, it takes on average three to six months to reach an initial decision, and 65% of claimants receive permission to stay in Norway. As in the UK, applicants may appeal an initial negative decision and, if unsuccessful, ask the Norwegian courts to review the Government's finding.
225. Asylum seekers able to present a clear form of ID are allowed to work while their application is being considered. The Minister, Jøran Kallmyr, said this encouraged people to be open with the Norwegian government, and suggested that asylum claimants genuinely in need of protection were happier to identify themselves.

Integration support

226. Norway operates an 'introduction programme', which provides a consistent package of integration support to all refugees, including people brought to Norway through the resettlement scheme and those who arrive spontaneously as asylum seekers. This three-year introduction programme provides adult refugees with Norwegian language lessons, work education and training, and a salary of approximately £1,500 per month. Refugees under the age of 18 are included in the regular educational system, including pre-school care.
227. To spread refugees throughout the country, Norway operates a voluntary system of asking municipalities to accept a proportion of overall numbers. There is on average a six-month wait between a person receiving a positive protection decision and moving to their designated municipality. During this time, refugees live in asylum reception centres, start language lessons, and receive support to prepare for their move.
228. Municipalities are responsible for administering a person's introduction programme. Municipalities receive a fixed sum of money over five years for

207 [Q 21](#) (Dr Hanne Beirens)

each refugee they accept, so there is an incentive for them to support refugees into work and financial independence as quickly as possible.

229. There is no way to guarantee that refugees will stay in their designated municipality, and some choose to move from rural areas to Oslo or other cities. However, as the introduction programme is tied to the municipality where they were placed, a refugee might lose financial support if they moved. UDI drew attention to efforts to distribute refugees across the country, and noted that refugees who had settled and integrated well into a community were less likely to seek better opportunities elsewhere.

Criticisms

230. Unsurprisingly, the Minister of Justice and UDI were very positive about the Norwegian asylum system and its operational efficiency, and those we met in Oslo were proud of Norway's strong humanitarian record and its investment in the successful integration of refugees. Nonetheless, we heard some criticisms of Norwegian asylum policy.
231. The Norwegian Refugee Council (NRC) highlighted two instances where UNHCR considered that Norway had violated the Refugee Convention:
- Designating Somalia as generally a 'safe' country, even though 80% of Somalis whose asylum cases were reassessed were found to be in continued need of protection.
 - The removal of the word 'reasonable' from Norway's criteria for returning asylum seekers to their country of origin on the basis of the 'internal flight alternative' principle, which had led to refugees being returned to countries like Afghanistan where they were not safe by any definition.
232. The NRC said that Norway needed to strike a better balance between seeking to control immigration and honouring its international protection obligations. They noted that municipalities were seeking, or already had, more places for refugees than the number being admitted to Norway.
233. The Norwegian Organisation for Asylum Seekers (NOAS) thought that Norway had one of the strictest asylum systems in Western Europe. They criticised Norway's decision to prohibit people from making asylum claims at the Norwegian border with Russia as a further breach of the Refugee Convention.
234. NOAS were also concerned about heavy-handed police treatment of people who had been refused asylum and were awaiting return. NOAS acknowledged that there had been improvements, but believed there was still political pressure on the police to handle returns cases in a way that discouraged people from making asylum applications in Norway. NOAS also criticised Norway's failure to establish an independent body for monitoring forced returns, in violation of the EU Returns Directive, which was transposed into Norwegian law in December 2010.

The Government's view

235. With regard to delays in processing family reunion cases for refugee children, the Minister, Brandon Lewis MP, told us that it was "only right" that sufficient time was dedicated to make the necessary checks to conduct

best interest assessments, trace family members, and verify the claimed relationship. Over time the number of children seeking to reunite with family members under the Dublin System had grown, which partly explained increased delays in case processing times. The evolution and improvement of processes to consider a take charge request involving an unaccompanied child were also factors.

236. On the suggestion that the Home Office applied excessively high standards of proof, the Minister said that the guidance on refugee family reunion rules had recently been revised. The revised guidance aimed to “streamline the process” and clarify expectations of applicants and sponsors—including on evidential requirements—and recognised the challenges applicants face in obtaining documents to support their application.
237. The Minister did not comment on the assertion that there was a two-tier system of support for refugees in the UK, but drew our attention to a new action plan published in February 2019 which set out the Government’s aim to improve integration support for all refugees. He confirmed that the VPRS and VCRS were being evaluated and said the findings would help to shape the new refugee resettlement programme, as well as integration support for all refugees in the UK.
238. On the external dimension of UK asylum policy, the Government would prioritise transitioning EU Readmissions Agreements to maintain and, where possible, enhance the UK’s capability to return individuals. In response to concerns about human rights considerations in relation to future returns agreements with third countries, the Minister confirmed: “The Home Office closely monitors developments in all countries of return and takes decisions on a case-by-case basis in the light of international obligations and the latest available country policy and information notes.”²⁰⁸

Conclusions

239. **The UK has a proud history of offering sanctuary to those in need and is a global leader in refugee resettlement. Nonetheless, the UK’s reputation has been damaged by restrictive family union policies and the, at times, inept administration of the UK asylum system. The Government’s wider review of future UK immigration policy provides an opportunity to develop a more effective and humane asylum policy.**
240. **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.**
241. **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**

²⁰⁸ Letter dated 10 September 2019 from Rt Hon Brandon Lewis MP to Lord Jay of Ewelme (see Appendix 7)

19-year-old in a dangerous country of origin, with no other family to protect them.

242. **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.**
243. **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.**
244. **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.**
245. **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.**
246. **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. 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.**
247. **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.**
248. **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.

- 249. 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.**
- 250. 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.**
- 251. Finally, we urge Ministers across Government to moderate the language they use when discussing asylum issues. The UK has much to be proud of in its contribution to refugee protection at the national and international levels, and should be a vocal advocate for protecting refugees from persecution. The Government should have the confidence publicly to challenge those who seek to present asylum seekers as a threat and something to be feared.**

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Refugee protection: international, EU and UK policy

1. The 1951 UN Refugee Convention, and its 1967 Protocol, provide the foundation of international obligations relating to the protection of refugees. The Refugee Convention defines who is a refugee, establishes the duty of non-refoulement, and outlines refugees' rights as well as their obligations to their host country. Other relevant international instruments include the UN Conventions against Torture and on the Law of the Sea, and the European Convention on Human Rights (ECHR). (Paragraph 54)
2. Within this framework, the EU has developed a Common European Asylum System (CEAS) which seeks to establish common standards for the reception and treatment of asylum seekers. Key CEAS measures include the Dublin System—to determine which Member State is responsible for examining an asylum application lodged in the EU—and the Eurodac database of the fingerprints of asylum seekers. (Paragraph 55)
3. While the CEAS has successfully established common minimum standards for examining asylum applications in the EU, it has not yet been able to achieve harmonisation to ensure that, no matter where someone applies for asylum in the EU, the outcome will be similar. (Paragraph 56)
4. The Dublin System has been characterised by low numbers of, and inefficiency in processing, transfer cases, although improvements have been made, particularly with regard to family reunion. The 2015 refugee crisis exposed further flaws, as a minority of EU countries faced a disproportionate burden in terms of arrival numbers and significant numbers of people chose to travel north rather than applying for asylum in the first EU country they reached. (Paragraph 57)
5. Negotiations on further reforms to the CEAS have stalled due to significant disagreement among Member States over plans to establish a 'corrective allocation mechanism' in the proposed Dublin IV Regulation to relieve the pressure on countries facing high numbers of asylum arrivals. (Paragraph 58)
6. The UK has a selective relationship with the CEAS. It participates fully in the Dublin and Eurodac Regulations but only opted into the original Directives on reception conditions, asylum procedures, and qualification for international protection (not the phase two recast versions). (Paragraph 59)
7. At the national level, there are a number of routes through which people in need of international protection might seek refuge in the UK, including: the asylum process for spontaneous arrivals, four refugee resettlement programmes, family reunion rules, the 'Dubs scheme' for unaccompanied children, and humanitarian protection. (Paragraph 60)
8. The UK receives a relatively low number of asylum applications compared to other European countries, not to mention the total number of displaced people worldwide. Despite the 2015 refugee crisis, the number of applications for asylum in the UK (30,000 in 2018) has remained fairly stable over the past five years. Across the EU, the number of people arriving to seek asylum has fallen significantly since the 2015 crisis, but has recently begun to rise, with notable increases in applicants from Latin and Central American countries. (Paragraph 61)

Brexit implications

Leaving the CEAS

9. The November 2018 Withdrawal Agreement has been rejected three times by the House of Commons. Nonetheless, it remains the only negotiated Brexit deal on the table. If approved, the Withdrawal Agreement would ensure UK participation in the Dublin System could continue until the end of the transition period, giving the UK and the EU time to negotiate new arrangements for asylum cooperation. (Paragraph 106)
10. The Government has indicated its intention to establish a new strategic relationship on asylum and migration with the EU—replicating some of the key principles of Dublin—rather than seeking some form of continued participation in the CEAS after Brexit. (Paragraph 107)
11. The most significant implication of leaving the CEAS would be the loss of a safe, legal route for the reunification of separated refugee families in Europe. This aspect of the Dublin System has seen improvements in recent years, and family reunion cases now make up more than 80% of incoming Dublin transfers to the UK. We are particularly concerned about a potential reduction in the reunion rights of vulnerable unaccompanied children, who are able to be reunited with a broader range of family members under the Dublin System than under UK Immigration Rules. (Paragraph 108)
12. Other benefits of the Dublin System include procedural safeguards, such as time limits, and increased control over asylum applications, including the ability to identify and return applicants who have already been registered in another European country. This is of clear interest to countries like the UK who seek to enforce the principle that those in need of protection should claim asylum in the first safe country they reach. (Paragraph 109)
13. Asylum standards in the UK will only be affected by Brexit insofar as they relate to the first phase of CEAS Directives. We note concerns about the loss of procedural protections set out in these Directives, and the possibility of “retrograde steps” without the overarching EU framework of standards. Nonetheless, we are reassured that the continued application of international law—including the Refugee Convention and ECHR—should ensure there is no diminution in the treatment and protection of asylum seekers in the UK. (Paragraph 110)
14. We call 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. (Paragraph 111)
15. 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. (Paragraph 112)

Bilateral cooperation

16. Bilateral relationships with EU Member States are essential to the effective management of UK borders, including asylum and migration flows. In particular, we highlight the system of juxtaposed border controls, which allows the UK to conduct checks on passengers and freight in France and Belgium, and France to complete Schengen entry checks in the UK. (Paragraph 113)
17. These arrangements are underpinned by bilateral and trilateral agreements, but their continued operation has come under scrutiny in the context of Brexit. Juxtaposed controls are particularly unpopular in the Calais region, where they have resulted in the establishment of unregulated camps of migrants seeking to travel to the UK to claim asylum. (Paragraph 114)
18. Calls to scrap juxtaposed controls, which followed the 2016 referendum, have now receded, and the UK and France have sought to reinforce their commitment to bilateral border cooperation through the recent Sandhurst Treaty and a joint action plan to tackle the rising trend in migrants attempting to cross the Channel in small boats. However, the effectiveness of these measures is questionable, and they have been subject to criticism for prioritising border control over humanitarian support. (Paragraph 115)
19. 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. (Paragraph 116)

Future UK-EU asylum cooperation*UK-EU cooperation*

20. There is a clear shared interest in maintaining UK-EU asylum cooperation after Brexit, to support the effective management of regional migration flows in Europe. Properly managed migration will also ensure that asylum seekers and refugees—some of the most vulnerable groups in society—can continue to exercise their right to claim asylum, and receive adequate protection and integration in a timely and humane way. (Paragraph 160)
21. 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. (Paragraph 161)
22. 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. (Paragraph 162)

23. 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. (Paragraph 163)
24. 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 UK-EU asylum cooperation prove more difficult or time consuming to negotiate. (Paragraph 164)
25. 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. (Paragraph 165)
26. In so doing, the UK would demonstrate solidarity, good will, and a willingness to play its part in managing migration flows across the continent. This in turn would help the UK to achieve its objective of securing an agreement to return asylum seekers to their first point of entry to the EU. (Paragraph 166)

Bilateral cooperation

27. 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. (Paragraph 167)
28. 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. (Paragraph 168)

29. 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. (Paragraph 169)
30. Bilateral relationships are important in managing migration flows, but they cannot replicate the level of cooperation the Government has said it would like to maintain with the EU after Brexit. 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. (Paragraph 170)

Future UK asylum policy

31. The UK has a proud history of offering sanctuary to those in need and is a global leader in refugee resettlement. Nonetheless, the UK’s reputation has been damaged by restrictive family union policies and the, at times, inept administration of the UK asylum system. The Government’s wider review of future UK immigration policy provides an opportunity to develop a more effective and humane asylum policy. (Paragraph 239)
32. 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. (Paragraph 240)
33. 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. (Paragraph 241)
34. 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. (Paragraph 242)
35. 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. (Paragraph 243)
36. 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. (Paragraph 244)

37. 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. (Paragraph 245)
38. 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. 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. (Paragraph 246)
39. 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. (Paragraph 247)
40. 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. (Paragraph 248)
41. 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. (Paragraph 249)
42. 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. (Paragraph 250)
43. Finally, we urge Ministers across Government to moderate the language they use when discussing asylum issues. The UK has much to be proud of in its contribution to refugee protection at the national and international levels, and should be a vocal advocate for protecting refugees from persecution. The Government should have the confidence publicly to challenge those who seek to present asylum seekers as a threat and something to be feared. (Paragraph 251)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Best
 Lord Haselhurst (until 2 July 2019)
 Baroness Janke (until 2 July 2019)
 Lord Jay of Ewelme (Chair)
 Baroness Jolly (from 2 July 2019)
 Lord Kirkhope of Harrogate
 Lord Lexden (from 9 September 2019)
 Baroness Massey of Darwen (until 2 July 2019)
 Lord McNally (from 2 July 2019)
 Baroness Newlove (from 2 July to 9 September 2019)
 Lord O'Neill of Clackmannan
 Baroness Pinnock (until 2 July 2019)
 Baroness Primarolo (from 2 July 2019)
 Lord Ribeiro (until 2 July 2019)
 Lord Ricketts
 Baroness Scott of Bybrook (from 2 July 2019)
 Lord Soley
 Lord Watts

Declarations of interest

Lord Best
Co-Chair, Home Office Right to Rent Consultative Panel
 Lord Haselhurst
No relevant interests declared
 Baroness Janke
No relevant interests declared
 Lord Jay of Ewelme (Chair)
Interests as set out in the Register of Lords' Interests
 Baroness Jolly
No relevant interests declared
 Lord Kirkhope of Harrogate
No relevant interests declared
 Lord Lexden
No relevant interests declared
 Baroness Massey of Darwen
Member, Parliamentary Assembly of the Council of Europe
 Lord McNally
No relevant interests declared
 Baroness Newlove
No relevant interests declared
 Lord O'Neill of Clackmannan
No relevant interests declared
 Baroness Pinnock
No relevant interests declared
 Baroness Primarolo
No relevant interests declared

Lord Ribeiro

No relevant interests declared

Lord Ricketts

No relevant interests declared

Baroness Scott of Bybrook

Councillor, Wiltshire Council

Vice-President, Local Government Association

Member, Grenfell Recovery Taskforce

Lord Soley

No relevant interests declared

Lord Watts

No relevant interests declared

The following Members of the European Union Select Committee attended the meeting at which the report was approved:

Lord Cavendish of Furness

Lord Faulkner of Worcester

Baroness Hamwee

Lord Jay of Ewelme

Lord Kerr of Kinlochard

The Earl of Kinnoull

Lord Lamont of Lerwick

Lord Morris of Aberavon

Lord Sharkey

Baroness Verma

Lord Wood of Anfield

During consideration of the report the following Members declared an interest:

Lord Cavendish of Furness

No relevant interests declared

Lord Faulkner of Worcester

No relevant interests declared

Baroness Hamwee

Sponsor, Refugees (Family Reunion) Bill [HL] 2017–19

Vice Chair, All Party Parliamentary Group on Migration

Detention Forum Champion 2018

Liberal Democrat House of Lords Spokesperson on Home Affairs (Immigration)

Lord Jay of Ewelme

Interests as set out in the Register of Lords' Interests

Lord Kerr of Kinlochard

Trustee, Refugee Council

Chairman, Centre for European Reform

The Earl of Kinnoull

No relevant interests declared

Lord Lamont of Lerwick

No relevant interests declared

Lord Morris of Aberavon

No relevant interests declared

Lord Sharkey

No relevant interests declared

Baroness Verma

No relevant interests declared

Lord Wood of Anfield

No relevant interests declared

A full list of Members' interests can be found in the Register of Lords Interests:
<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-oflords-interests/>

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at <https://www.parliament.uk/hlinquiry-brexity-asylum-international-protection> for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with a ** gave both oral and written evidence. Those marked with * gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

Oral evidence in chronological order

**	Judith Dennis, Policy Manager, Refugee Council	QQ 1–17
**	Jon Featonby, Policy and Advocacy Manager, British Red Cross	
*	Lord Dubs	
**	Eleanor Harrison, Chief Executive, Safe Passage	
**	Alice Lucas, Advocacy and Policy Manager, Refugees Rights Europe	QQ 18–29
*	Dr Hanne Beirens, Acting Director, Migration Policy Institute Europe	
*	Colin Yeo, Barrister, Garden Court Chambers	QQ 30–38
**	Professor Elspeth Guild, Professor of Law, Queen Mary University of London	
**	David Bolt, Independent Chief Inspector of Borders and Immigration	QQ 39–45
*	Jan Bayart, Deputy Head of Mission, Embassy of Belgium in the United Kingdom	QQ 46–54

Alphabetical list of all witnesses

*	Jan Bayart, Deputy Head of Mission, Embassy of Belgium in the United Kingdom (QQ 46–54)	
*	Dr Hanne Beirens, Acting Director, Migration Policy Institute Europe (QQ 18–29)	
	Bernard Ryan & Alan Desmond	AIP0006
**	David Bolt, Independent Chief Inspector of Borders and Immigration (QQ 39–45)	AIP0013
**	British Red Cross	AIP0008
**	Judith Dennis, Policy Manager, Refugee Council (QQ 1–17)	
*	Lord Dubs (QQ 1–17)	

	European Children’s Rights Unit and Liverpool Law Clinic	<u>AIP0007</u>
**	Jon Featonby, Policy and Advocacy Manager, British Red Cross (<u>QQ 1–17</u>)	
**	Professor Elspeth Guild, Professor of Law, Queen Mary University of London (<u>QQ 30–38</u>)	<u>AIP0001</u>
**	Eleanor Harrison, Chief Executive, Safe Passage (<u>QQ 1–17</u>)	
	Immigration Law Practitioners’ Association	<u>AIP0002</u>
**	Alice Lucas, Advocacy and Policy Manager, Refugees Rights Europe (<u>QQ 18–29</u>)	
	Public Health England	<u>AIP0004</u>
**	Refugee Council	<u>AIP0003</u>
**	Refugee Rights Europe	<u>AIP0009</u>
**	Safe Passage	<u>AIP0011</u> <u>AIP0005</u>
	SOGICA Project	<u>AIP0010</u>
	SOS Children’s Villages UK	<u>AIP0012</u>
*	Colin Yeo, Barrister, Garden Court Chambers (<u>QQ 30–38</u>)	

APPENDIX 3: CALL FOR EVIDENCE

The House of Lords EU Home Affairs Sub-Committee, chaired by Lord Jay of Ewelme, has launched an inquiry into the UK's future relationship with the EU on asylum cooperation. The inquiry will focus on the impact of Brexit on current UK-EU asylum cooperation, as well as possible models for future cooperation and the impact this could have on asylum seekers interacting with any future system.

This is a public call for written evidence to be submitted to the Committee. The deadline is Friday 24 May. The Committee values diversity and seeks to ensure this wherever possible. Guidance on how to submit evidence is set out later in this document, but if you have any questions or require adjustments to enable you to respond, please contact the staff of the Committee. We look forward to hearing from a range of interested individuals and organisations.

Inquiry focus

The opportunity that leaving the EU offers the UK to control immigration and secure its borders was referenced throughout the 2016 referendum debate and has been a central element of the Government's Brexit policy. It has been suggested, however, that without an agreement to replace current UK-EU asylum cooperation the UK may in fact find it more difficult to manage asylum flows.

The Government's Immigration White Paper indicates that it intends to negotiate a new legal framework to return "illegal migrants, including asylum seekers, to EU countries they have travelled through or have a connection with, to have their protection claim considered". To date there has been limited discussion between the UK and EU on the form this framework might take. The EU has not published any position on the future framework of asylum cooperation.

UK-EU asylum cooperation is complex, with the UK opting into some aspects of the Common European Asylum System (CEAS) and not others. The Committee has examined briefly two parts of CEAS: the Dublin Regulation and EURODAC.

This inquiry intends to look at the UK's relationship with CEAS in more depth, and to examine what type of agreement the UK should seek with the EU on future asylum cooperation, including:

- the Dublin III Regulation and proposed Dublin IV
- Standards of protection and assistance in the UK and EU
- the Immigration Liaison Officer network
- Readmission agreements with third countries
- the EU Asylum and Migration Fund

The Committee is seeking evidence on the following questions. Submissions need not address all questions.

- What form should future UK-EU asylum cooperation take? What will be the key factors which determine the nature and extent of this relationship?
- How relevant are existing models of cooperation on asylum between the EU and third countries, such as Norway, to the UK situation? How important is participation in Schengen and the Single Market in facilitating this cooperation?

- Do you think that minimum standards of protection, assistance, and future alignment in qualification for international protection should or will be important factors in negotiating a new legal framework for future UK-EU asylum cooperation?
- What is your assessment of the success of CEAS, in particular the Dublin system? Has it achieved its aims?
- How has EU asylum law influenced the UK? Has the UK “levelled up” to EU standards, or vice versa?
- What is the likelihood that the UK will continue to be able to access EURODAC after Brexit, both for asylum and law enforcement purposes? What would be the implications for the UK if it could not access EURODAC for either of these purposes?
- What is your opinion on the Government’s policy on family unification for asylum seekers?
- What systems and service should be in place to meet the needs of children seeking asylum, especially unaccompanied asylum-seeking children?
- What is your view on the extent to which rights of asylum seekers in the UK will be upheld and protected after Brexit?
- What might the UK’s participation in the EU’s Immigration Liaison Officer network look like after Brexit and what impact that could that have on asylum cooperation?
- After Brexit, the UK will need to negotiate new bilateral agreements with some third countries to facilitate the return of irregularly staying migrants to their country of origin. Do you have any concerns about the UK negotiating these agreements?
- How might the UK continue to participate in the EU’s Asylum and Migration Fund as a third country after Brexit?
- What is your assessment of the role the UK has played in providing global leadership and support in tackling key migration challenges?
- How does the UK cooperate with other countries on asylum matters through bilateral and (non-EU) international channels? Should the UK seek to enhance this cooperation after Brexit?
- How important will the UK-France relationship be in managing migration flows? What impact might Brexit have on this?

APPENDIX 4: VISIT TO NORWAY

Members of the Sub-Committee taking part in the visit were Lord Haselhurst, Lord Jay of Ewelme (Chair), Baroness Janke, Lord Ribeiro, and Lord Watts. Staff supporting the visit were Pippa Patterson (Clerk), Megan Jones (Policy Analyst), and Vanessa Ivanov (European Affairs and Trade Policy Adviser, British Embassy Oslo).

Oslo, Tuesday 25 June

Ministry of Justice and Public Security

The Committee was welcomed by Jøran Kallmyr, Minister of Justice and Immigration, Siw Lexau, Deputy Director General, Magne Holter, Assistant Director General, and Senior Advisers Anne Thea Eger Gervin and Kathrine Lund Brinch. The UK Ambassador to Norway, Richard Wood, was also present.

It was noted that Norway was a ‘pull’ country due to its strong economy and extensive welfare system. Although the cost of living in Norway was high, it offered good social security benefits, which meant that some immigrants who earn lower salaries could be worse off in work than they would be on benefits. Low-skilled immigrants could find it hard to integrate into Norway’s highly-skilled economy. The immigration system in Norway needed to be strict but fair because too many people coming to Norway and living on benefits would put a strain on its welfare system.

The number of people arriving to make asylum claims in Norway differed substantially from year to year—in 2018 and so far in 2019 the number was fairly small. Norway also had a resettlement programme—with refugees identified by UNHCR—with a quota of 3,000 people in 2019.²⁰⁹ In 2019 most of these refugees were Syrian, Congolese and South Sudanese and were resettled out of Lebanon and Jordan, Uganda and Ethiopia.

On handling asylum claims, it was noted that the process took on average 3–6 months to reach an initial decision, with 65% receiving permission to stay. Claimants denied asylum could appeal, and, if unsuccessful, ask the Norwegian courts to consider whether the Government’s finding was valid. Asylum seekers presenting a clear form of ID were allowed to work while their application is being processed. It was suggested that this right to work was a benefit which encouraged people to be open with the Norwegian government, and that asylum claimants genuinely in need of protection were happier to identify themselves.

Very few unsuccessful asylum seekers were granted leave to remain in Norway on other humanitarian grounds e.g. health. Since 2013, the Government had operated a proactive policy of returning those who don’t have permission to stay in Norway - such as people refused asylum - as quickly as possible.

Norway had an ‘introduction programme’ to support refugees at a cost of approximately £100,000 per refugee.²¹⁰ This was a three-year programme to enable adult refugees to learn Norwegian and receive work education and training, and included a small salary of approx. £1,500 per month. Refugees under 18 were included in the regular educational system, including pre-school care.

209 Note by the witness: The size of the quota is decided each year by the Storting (Norwegian Parliament).

210 Note by the witness: The introduction programme supports all refugees, those who have come through the resettlement scheme and those who have arrived spontaneously as asylum seekers.

On distribution, Norway spread refugees throughout the country by asking municipalities to accept a proportion of overall numbers. If the refugees moved away from their designated municipality (to Oslo or other cities), they might no longer receive financial assistance as this was normally tied to the municipality where they were placed.²¹¹ It was noted that children of immigrants could struggle with the feeling of inequality compared to others whose families have lived in Norway for many years.

Generally, the Norwegian people were welcoming towards asylum seekers because the numbers were low and there was confidence in the management of the border, but there was some concern about certain groups being less willing to integrate. It was explained that public opinion in Norway towards asylum seekers and refugees had begun to change in 2015 when large numbers of asylum seekers entered the EU and Norway and there was a public perception that the government was losing control over Norway's borders. Parliament was then able to change legislation on asylum procedures in just one week, which was unprecedented. The political discussion on the question of when Norway would lift its temporary reintroduction of Schengen border controls was ongoing.

While maintaining the principle that the first safe country which asylum seekers reached should take responsibility for their asylum applications, it was noted that this placed a disproportionate burden on countries like Greece and Italy. Norway was open to the idea of relocating asylum seekers across the EU, so long as this was official EU policy and most Schengen countries took their fair share. If only Germany and the Nordic countries, for example, agreed to relocation, there would still be a 'pull' factor as asylum seekers would know all they had to do was reach the EU and then they would be sent on to these countries. This factor would be reduced if all countries took part as people could not be certain which EU Member State they would end up in.

Norway supported reform of CEAS but it was noted that EU Member States had many different opinions on how to handle asylum making progress on reform difficult. There needed to be a balance between resettling refugees in the EU and supporting them to stay in their region of origin by investing in improving conditions in refugee camps. Norway's answer was to try and do both—resettling some refugees and then giving financial support to countries like Turkey and in international aid to try and address the root causes of irregular migration like conflict and instability.

The main imperative for Norway joining Schengen was to maintain the free Nordic passport area, and participation in the Dublin System and Eurodac was a necessary part of Schengen association. Norway valued its Schengen association and would not seek to diverge from the *acquis*. If it did, it could be thrown out of Schengen according to timescales set out in its membership agreement, known as the 'guillotine clause'.

On influence over EU policies, it was noted that Norway took part in Schengen co-operation based on an association agreement which provided a good level of influence. Norway also had good allies among EU Member States (especially the UK and Northern European countries) who helped to make sure Norway's views were heard and reflected. This type of influence was described as 'decision shaping not decision making', with Norway successfully developing a 'soft' approach to influencing EU policy. This would be much harder for the UK to follow, as a

211 Note by the witness: The municipalities refugees want to relocate between may agree to share expenses/government grants and continue the introduction programme.

bigger country used to having Member State status. Key to Norway's success was having strong arguments on the table about policy implications or consequences, and building alliances with like-minded EU member states. However, Norway would like to have a greater voice on country of origin reports. It was noted that Norway has flexibility on asylum because it is not bound by all CEAS legislation but is still indirectly influenced by EU jurisprudence.

Oslo, Wednesday 26 June

Norwegian Refugee Council (NRC)

The Committee was welcomed by Pål Nesse, Senior Adviser, and Martin Hartberg of the Norwegian Refugee Council's London office and given an overview of the history and work of the Norwegian Refugee Council (NRC).

The NRC used its international expertise to contribute to public debate on asylum seekers and refugees at the national level in Norway, providing a global perspective and advising on how many refugees to resettle. Norway was a small country but a 'superpower' on humanitarian issues, and it was important to demonstrate positive domestic action on asylum seekers and refugees to maintain legitimacy on the international stage. For example, in 2015 Norway sent search and rescue ships to support Italy and Greece in dealing with migration crisis as a positive gesture of international cooperation.

The NRC was concerned about the impact of recent criticisms of the Norwegian asylum policy on support for the UNHCR. The UNHCR considered that Norway had violated the Refugee Convention by:

- Declaring cessation in relation to refugees from Somalia: designating Somalia as generally 'safe', even though in 80% of cases where need for protection was reassessed, it was found not to be safe for Somali refugees to go home, leading to considerable uncertainty for those who have lived in Norway for a long time.
- Removing the word 'reasonable' in relation to Norway's criteria for the internal flight alternative for returning asylum seekers to another place in their country of origin—that refugees are being returned to countries like Afghanistan where they are not safe by any definition.

The NRC believed that Norway should continue to support and engage with UNHCR both internationally and domestically.

The NRC wanted a better balance to be struck between seeking to control immigration and honouring international protection commitments: a long-term view rather than reacting to short-term negative public opinion about refugee numbers. Municipalities were seeking, or already had, more places available for refugees than were being admitted to Norway. In particular, NRC were concerned by changes to immigration laws pushed through the Norwegian Parliament in 2016, over one weekend, in response to a swing in public opinion over the 2015 refugee 'crisis'.

The Norwegian Government had been able to describe asylum seekers as a threat and a burden, rhetoric which made it harder to be a refugee and to successfully integrate in Norway. Surveys on Norwegian attitudes showed there was much support for refugees, but this was not the same for asylum seekers. There was a misperception that most asylum seekers were not genuine refugees, when in fact 70% of asylum seekers were granted protection in Norway. In comparison to the

UK, there was no national debate and very little media coverage of refugee issues in Norway.

The NRC explained that Dublin IV had stalled holding up the whole package of CEAS reforms. Due to the need for consensus, the attitude of some EU countries towards relocation and burden-sharing was preventing the EU and reasonable like-minded Member States (a ‘coalition of the willing’) from reaching pragmatic solutions. This left Greece and Italy standing alone, damaging European solidarity and hardening attitudes towards asylum seekers in these countries. EU countries were not able to ‘cherry pick’ among the benefits and responsibilities of membership and the NRC questioned whether this should be the same for EU refugee policy. However, it was noted that refugees were unlikely to have a good quality of life in countries that were forced to take them but clearly didn’t want them there. They also believed that it was hypocritical when countries like Norway urged countries that shared borders with crisis areas, such as Turkey and Jordan, to keep their borders open while Norway was increasing border controls, leading to an unfair burden on neighbouring countries.

The NRC considered that the idea of externalising the EU’s asylum responsibilities had no merit. They questioned what law would apply and how rights could be protected. Refugees could be stuck in camps for many years with no international assistance and the numbers of people resettled to Europe and the US from these camps was going down. Countries hosting these camps would eventually lose political will and so there was a need to establish better returns procedures, increase aid to and dialogue with countries of origin, and ensure there were safe and legal migration routes for refugees to take.

The NRC believed that, at the working level, the UK Department for International Development was well-respected as a partner in international dialogues on asylum and migration issues. At the political level however, there was a lack of willingness in the UK to publicly acknowledge the relatively good level of support it provided internationally. As a result (combined with the UK’s weak domestic resettlement programme and mostly negative political rhetoric around asylum seekers) the UK had lost its moral authority on asylum cooperation internationally. It was also noted that the unwillingness of governments in Europe to frame the granting of asylum or protection for people in desperate situations as a positive story (something to be proud of) had given a free platform to anti-migration voices to shape the narrative in terms of a threat and something to fear.

Heidi Nordby Lunde MP, Norwegian Parliament

The Committee was welcomed by Heidi Nordby Lunde MP (a Conservative member of the Norwegian Parliament), and Senior Advisers Margrethe Saxegaard and Per S. Nestande.

Heidi Nordby Lunde said that Brexit would affect Norway’s relationship with the UK, not Norway’s relationship with the EU. Norway had tried to be a helpful partner for the UK in the Brexit process, supporting constructive dialogue. There may be some additional trade barriers between the UK and Norway after Brexit but, ultimately, the strong bilateral relationship was expected to continue.

It was noted that the experiences of Norway and the UK with regard to the EU were very different. Norway was a small country which was (largely) positive about its relationship and alignment with the EU, as long as full membership was not discussed. The UK, on the other hand, was a large country which had been

dissatisfied with its EU membership and wanted more freedom and less alignment with the EU.

The EEA had contributed a lot to the Norwegian economy. In Norway, most EU legislation was seen as sensible and non-controversial: 98% vs. 2% negative, mainly to do with energy and labour market, such as Workers' Rights Directive and 'social dumping'. Eurosceptic parties and politicians raised these issues publicly but, despite some concern, good standards of living in Norway (happiness, education, social security, rights) demonstrated to Norwegians that there had been little negative impact from Norway's relationship with the EU.

Although migration issues could be controversial and there was some disagreement between the political parties on this, migration was seen as a national rather than a European issue. From 2015, Norway had implemented temporary reintroduction of border controls (to ferries from Sweden, Denmark and Germany) and other measures which had been credited with reducing numbers of asylum seekers. Ms Lunde considered that this reduction in numbers could also be attributed to EU-wide measures and strategy.

There was room for improvement in Norway's refugee integration programme, for example in language and literacy skills for adult women and mothers. Norway was very aware of the importance of integration support to ensure young male asylum seekers were not vulnerable to radicalisation. Generally, Norwegians were happy to invest in integration support because, when refugees were able to work and fulfil their potential, they contributed to the economy and helped to maintain the welfare state, which was good for all Norwegians. As in the UK, there was some suspicion that, if child refugees were able to enter Norway and sponsor their families to join them, this would incentivise parents to send their children ahead unaccompanied on dangerous migration routes. It was noted that it was very difficult to verify whether there was any evidence to support this suspicion through research done so far.

There was no sense that the EU had exerted pressure on Norway to do its 'fair share' with regard to asylum challenges. Norway had a strong record on humanitarian issues, and it had been a natural response for Norway to voluntarily accept refugees and make a fair contribution to EU rescue and safety operations in the Mediterranean. Norway proactively engaged in discussions on CEAS and the EU's response to the 2015 refugee crisis which ensured it was fully involved in these operations and discussions on CEAS reform. It was noted that Norway took on a burden disproportionate to its population size in terms of resettling refugees and providing international aid to countries hosting refugee camps, but felt a responsibility to do so due to its wealth and resources.

Directorate of Immigration (UDI)

The Committee was welcomed by Frode Forfang, Director General, Tor-Magne Hovland, Head of International Section, Analysis and Development Department, and Mi Hanne Christiansen, Senior Adviser, Asylum Department. UDI representatives gave a presentation on the structure of immigration administration in Norway, the role of UDI, and the process for seeking asylum in Norway.

Norway maintained a list of countries whose citizens were deemed to have no reason to need international protection. The processing of asylum applications for people from these countries was prioritised to ensure those who were likely to receive a negative decision could be returned as quickly as possible (a 48-hour processing time). UDI said this removed the incentive for people from countries

with visa-free travel to the Schengen zone to try their luck at claiming asylum in Norway.

Norway's investment in a dedicated police unit to handle returns had led to a good system and a relatively high number of returns e.g. to Afghanistan. On the policy of internal flight (or relocation) alternative for asylum seekers from Afghanistan, Norway's assessment of the safety of parts of Afghanistan was similar to that of other European countries. Nonetheless, Norway differed from other countries in that it had removed the word 'reasonable' from its legislation on internal flight alternative.

Like the UK, Norway had experienced difficulties with the question of how to verify the age of unaccompanied refugee children. Medical tests had been used but there were ongoing questions over their reliability.

For those who are granted international protection, there was an average wait of six months between a positive decision and being relocated to a municipality which was then responsible for administering the introduction programme. During these six months, refugees started language lessons, and asylum services had time to prepare them and the municipality for their arrival (to account for differing needs depending on e.g. whether the case was a single person or a family group).

Municipalities were given a fixed sum of money over five years for each refugee they accepted, providing an incentive for municipalities to support refugees into work and financial independence as quickly as possible. Municipalities were not allowed to pick and choose refugees to resettle based on nationality but could refuse people on certain health grounds, such as mental health, if they felt unable to provide the person with the support they needed. The question of how to incentivise municipalities to accept the small number of refugees with very complex support needs—so they were not stuck in asylum reception centres for extended periods—remained unresolved.

UDI monitored the success of municipalities at integrating refugees to ensure lessons learned and best practice could be shared. Under-performing municipalities would not be allowed to take further refugees. The system of distribution operated on consensus, with municipalities volunteering to take specified numbers of refugees. Although there was no way to guarantee that a refugee would stay in their assigned municipality, the level of permanent geographic spread was higher due to initial efforts to distribute refugees across the country. Refugees who had settled and integrated well into a community were also less likely to seek better opportunities elsewhere. There was also a financial incentive to complete at least the period of the introduction programme, because refugees would lose financial support if they left their municipality and also because they could not get permanent leave to remain without completing a minimum number of language lessons.

On EU cooperation, UDI said that they participated in EU meetings at an operational level and attended EASO meetings three times a year. In terms of exercising influence, they believed it was not the size of the country that mattered but what you brought to the table, or the quality of what you had to say.

Norwegian Organisation for Asylum Seekers (NOAS)

The Committee was welcomed by Ann-Magrit Austenå, Secretary General, and Andreas Furuseth, Senior Legal Adviser, who gave a presentation on how the

Norwegian Organisation for Asylum Seekers (NOAS) supports asylum seekers and refugees in Norway before taking questions.

Since 2015 the approval rate for asylum claims in Norway had been 66–75%. NOAS thought Norway had one of the strictest asylum systems in Western Europe and pointed out that the EU-Turkey deal and temporary introduction of border controls had contributed to lower numbers of asylum seekers coming to Norway. Under Norway's asylum system, residence permits for refugees were generally granted for three years, and then people could apply for permanent or longer-term leave to remain. Unaccompanied refugee children were assigned dedicated legal representatives and housed in different special reception facilities, depending on age.²¹² Unaccompanied children received advice from NOAS in age-appropriate formats—in general, NOAS only gave regular information and legal advice to the 15-18 age group. NOAS also tried to follow up with these children after they were fostered.

Norway did not now allow asylum seekers to make a claim at the border with Russia. No one was allowed to cross into Norwegian territory unless they had a valid visa to Norway or to the Schengen zone. NOAS saw this as a breach of the Refugee Convention. Those turned away at the border might be detained and deported by Russian authorities, and others who were released might remain in Russia with no legal status. After recent changes to legislation, Norway was no longer required to determine whether someone had a reasonable chance of accessing asylum procedures in another country before turning them away. NOAS said this was a further breach of the Convention.

NOAS was also concerned about police treatment of people refused asylum who were awaiting return, for example, proper processes not being followed and heavy-handed treatment. Despite recent improvements, concerns remained over political level instructions on how police should handle returns cases i.e. to try and disincentivise asylum applications in Norway. NOAS criticised Norway's failure to establish an independent body for monitoring forced returns, in violation of the EU Returns Directive which was transposed into Norwegian law in December 2010. EU Commissioner Dimitris Avramopoulos criticised the failure to establish such a body in a letter to the Ministry of Justice in May 2015.

It was noted that strict family reunion criteria meant that men did not make the dangerous journey to seek asylum alone because they could not be sure they would be able to bring family to join them later. As a result, more people were facing danger because men were bringing their wives and children with them on the crossing.

Oslo, Thursday 27 June

Ministry of Foreign Affairs

The Committee was welcomed by Atle Leikvoll, Brexit Coordinator, and colleagues Mathias Rongved, Siri Sletner, and Mari Owren. The UK Ambassador to Norway, Richard Wood, was also present. Mr Leikvoll gave an overview of

212 Note by the witness: Children under 15 are housed in care centres run by child care authorities under the Ministry of Children and Families. Children aged 15–18 are housed in reception centres run by UDI, with less rights, fewer professional caretakers and less care secured. This unlawful discrimination of the unaccompanied minors of 15–18 years (since 2009) has been criticised by NOAS, Save the Children in Norway, UNHCR, UNICEF, The UN Children's Committee in their 2018 assessment of human rights standards and practice in Norway, and by the Norwegian Institution for Human Rights, which reports to the Norwegian parliament on the situation for human rights in Norway.

Norway's relationship with the EU and how Norway sought to shape EU legislation as a third country member of the EEA and Schengen Area. Mr Leikvoll also set out the work undertaken by the Norwegian Government to maintain UK-Norway trade and protect citizens rights after Brexit, including steps taken to mitigate the impact of a 'no deal' Brexit scenario.

APPENDIX 5: DEFINING THE TERM ‘REFUGEE’

The 1951 Refugee Convention

Article 1

A. For the purposes of the present Convention, the term “refugee” shall apply to any person who:

1. Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section.

2. As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B.

1. For the purposes of this Convention, the words “events occurring before 1 January 1951” in article 1, section A, shall be understood to mean either:
 - (a) “events occurring in Europe before 1 January 1951”; or
 - (b) “events occurring in Europe or elsewhere before 1 January 1951”, and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.
2. Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section A if:

1. He has voluntarily re-availed himself of the protection of the country of his nationality; or
2. Having lost his nationality, he has voluntarily re-acquired it; or

3. He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
4. He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
5. He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality.

6. Being a person who has no nationality he is, because of the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.²¹³

The 1967 Protocol

Article 1

1. The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.

²¹³ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137: <https://www.refworld.org/docid/3be01b964.html> [accessed 30 July 2019]

2. For the purpose of the present Protocol, the term “refugee” shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words “As a result of events occurring before 1 January 1951 and ... “ and the words “ ... as a result of such events”, in article 1 A (2) were omitted.
3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article 1 B (1) (a) of the Convention, shall, unless extended under article 1 B (2) thereof, apply also under the present Protocol.²¹⁴

214 UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267: <https://www.refworld.org/docid/3ae6b3ae4.html> [accessed 30 July 2019]

APPENDIX 6: GLOSSARY

AMIF	Asylum, Migration and Integration Fund EU fund to promote the management of migration flows and support a common EU approach to asylum and immigration.
‘Asylum seeker’	A person who has left their country of origin and formally applied for asylum in another country but whose application has not yet been concluded.
CAT / UNCAT	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEAS	Common European Asylum System EU rules to align Member States’ asylum legislation and promote cooperate (incl. The Asylum Procedures Directive, the Reception Conditions Directive, the Qualification Directive, the Dublin Regulation, the EURODAC Regulation). A 2016 package of proposals to reform the CEAS remain under negotiation.
COI	Country of Origin Information (COI) refers to information on countries from which asylum seekers originate relevant for decision-makers in the field of asylum.
Dublin System / Dublin III	The process of determining the EU State responsible for examining asylum applications by third country nationals under the Dublin III Regulation. Based on the principle that the first EU State where finger prints are stored, or an asylum claim is lodged, is responsible for a person’s asylum claim.
Dublin IV	Proposed reform to the Dublin System. Among other reforms, Dublin IV would provide for the relocation of new asylum applicants from EU States receiving disproportionate numbers.
‘Dubs amendment’/the ‘Dubs scheme’	Refers to section 67 of the Immigration Act, to allow unaccompanied asylum-seeking children to be relocated to the UK from other countries in Europe.
CJEU	Court of Justice of the European Union
EASO	European Asylum Support Office
EBCG/Frontex	European Border and Coast Guard Agency (known as Frontex)
ECHR	European Convention on Human Rights
EMN	European Migration Network EU network of migration and asylum experts who work together to provide objective, comparable policy-relevant information.

EUAA	European Union Agency for Asylum The new name of EASO pending agreement of the proposal to amend and expand the body's mandate.
EURODAC 'Hotspots'	EU database of the fingerprints of asylum seekers Approach where EU agencies work on the ground with the authorities of EU States facing disproportionate migratory pressures at the EU's external borders (e.g. Greece and Italy). Support focuses on the registration, identification, fingerprinting and debriefing of asylum seekers, as well as return operations. EASO helps to process asylum applications as quickly as possible and Frontex helps to coordinate the return of irregular migrants who are not in need of protection.
'Internal flight/ relocation alternative'	The idea that, rather than seeking asylum in another country, a person should relocate to a specific area of their country of origin where there is no risk of a well-founded fear of persecution and where they could reasonably be expected to establish themselves and live a normal life.
ILO 'Irregular migrant'	Immigration Liaison Officer In the global context, a person who, owing to irregular entry, breach of a condition of entry or the expiry of their legal basis for entering and residing, lacks legal status in a transit or host country. In the EU, a third-country national present in a Schengen State who does not fulfil, or no longer fulfils, the conditions of entry in the Schengen Borders Code, or other conditions for entry, stay or residence in that EU Member State.
'Non-refoulement'	The principle that a refugee or asylum-seeker should not be returned to territories where there is a risk that his or her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion (now considered customary international law).
'Refugee'	In the UK, a person is officially a refugee when they have their claim for asylum accepted by the government. If the government agrees that an individual who has applied for asylum meets the definition in the Refugee Convention they will 'recognise' that person as a refugee and issue them with refugee status documentation. Usually refugees in the UK are given five years' leave to remain as a refugee. They must then apply for further leave, although their status as a refugee is not limited to five years.

‘Return’	The movement of a person (whether voluntary or forced, assisted or spontaneous) going from a host country back to their country of origin, country of nationality or habitual residence usually after spending a significant period of time in the host country.
‘Secondary movement’	The movement of migrants, including refugees and asylum seekers, from the country in which they first arrived to seek protection or permanent resettlement elsewhere.
SOGI	Sexual orientation and gender identity
‘Take charge request’	A request to from one Dublin System Member State to another to take charge of an asylum application (to accept responsibility for it). This must be made within three months of the date of the initial application, and the requested country must give a decision within two months of receiving the request.
UASC	Unaccompanied asylum-seeking children
UNCLOS	UN Convention on the Law of the Sea
UN Convention on the Status of Refugees (the Refugee Convention)	1951 Convention, ratified by 145 State parties, which defines the term ‘refugee’ and outlines the rights of the displaced, as well as the legal obligations of States to protect them.
UN Protocol on the Status of Refugees	1967 Protocol which broadens the applicability of the Refugee Convention by removing geographical and time limits on the definition of a refugee.
UNHCR	Office of the United Nations High Commissioner for Refugees
VCRS	Vulnerable Children’s Resettlement Scheme
VPRS	Syrian Vulnerable Persons Resettlement Scheme

APPENDIX 7: LETTER FROM THE SECURITY MINISTER TO LORD JAY OF EWELME, 10 SEPTEMBER 2019

This letter is available on the Committee's website at: <https://www.parliament.uk/documents/lords-committees/eu-home-affairs-subcommittee/Immigration/letter-from-brandon-lewis-mp-to-lord-jay-100919.pdf>

Dear Lord Jay,

Following your letter of 17 July to the then Immigration Minister, I am writing to address your questions raised in preparation for the future evidence session on 'future UK-EU asylum cooperation. I have addressed each of the questions below, in turn.

The Government's White Paper on the Future Relationship between the UK and the EU says it will seek "a new legal framework to return illegal migrants and asylum-seekers to a country they have travelled through, or have a connection with, in order to have their protection claim considered, where necessary".

Has the Government determined that it will not be possible to participate in the Dublin system as a third country after the UK leaves the EU? Will the Government seek to include Schengen-associated countries in this agreement? Will the Government seek to ensure that any new legal framework mirrors the Dublin System? If not, in what ways do you expect it will differ? Do you hope to continue cooperating with other relevant EU measures and agencies, such as EURODAC, EASO, and operations like EUNAVFOR MED?

There is no precedent for a non-EU country outside of the Schengen Area to participate in the Dublin Regulation, though our continued participation in Dublin as a third-country may not be impossible. More importantly, the EU is currently discussing a range of reforms to the Common European Asylum System, which specifically includes the recasting of the Dublin Regulation. As it is currently constructed, the UK has chosen to not opt-in to the Dublin IV regulation. This is because a key premise of the recasted regulation is the introduction of a redistribution mechanism to relocate asylum seekers. 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 will simply move the problem around Europe, whilst ultimately being unlikely to be effective at stopping secondary or tertiary movement. 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.

The UK is not seeking third country access to the Dublin Regulation. Instead, the UK is seeking to negotiate a new reciprocal returns agreement with the EU to ensure that third country illegal migrants and asylum seekers can be returned to the country they entered the UK/EU from or have a connection with (for example, a student visa). Ideally this agreement would be underpinned by a biometric system, such as Eurodac, which would be used to evidence travel through or connection to the EU or the UK, and would provide a seamless and efficient way of monitoring secondary movements. An agreement based on this framework would reflect the UK's unique geographical position in relation to the EU, and the ongoing need for consistent messaging to migrants about secondary movements between the EU and the UK.

The Government's ambition is to achieve a readmissions agreement with the EU following the UK's departure from the EU. Arrivals from and returns to Schengen Area countries that are not in the EU account for a very small proportion of overall arrivals and returns. However, once such an agreement with the EU is reached then the UK could look to extend this to all Schengen Area countries.

While the proposed new UK-EU Readmissions Agreement may share some similarities with Dublin, the UK does not intend to replicate the Dublin Regulation. The UK's departure from the EU presents us with an opportunity to achieve an agreement that is more effective and ambitious than the Dublin Regulation. Consequently, we are confident of negotiating important differences, for example, to ensure the inclusion of all illegal migrants rather than only including asylum seekers.

We value close co-operation with the EU on asylum and migration matters, and we want that to continue, whether we achieve this continued co-operation will depend on post EU Exit negotiations. However, we intend to continue participation with Eurodac, EASO and EUNAVFOR MED.

Does the UK have staff in all its European embassies dedicated to managing the protection of asylum seeker children or asylum seekers generally? Please provide an overview of the support provided.

The protection of asylum seeking children and asylum seekers more generally is the responsibility of the country in which they are present. However, the UK has staff in each of its European embassies with responsibilities relating to Justice and Home Affairs or wider political affairs. The specific nature of these responsibilities varies depending on the relevant bilateral relationship.

Responsibilities often include observing the development and implementation of asylum policy by the host authorities. Where necessary, embassies are also reinforced with liaison officers to facilitate the safe transfer of eligible children (under section 67 of the Immigration Act), as well as children, families and adults (under the Dublin III regulation).

We work closely with European governments to facilitate both schemes. In specific relation to France, the Sandhurst Treaty provides for a dedicated liaison officer, who is based in the French Ministry of Interior, to help support this work.

How much funding has the UK Government provided, or committed to provide, for humanitarian efforts in the Calais region to support asylum seekers and refugees?

As part of our cooperation on asylum under the Sandhurst Treaty, we have strengthened the processes for transferring unaccompanied children between France and the UK to reduce the numbers of people attempting to cross the border illegally. Our comprehensive plan ensures that migrants, and particularly unaccompanied children, who have travelled to northern France and are willing to engage with and access the asylum system in France quickly, and are supported through the process.

A portion of the total £45.5 million Sandhurst Treaty funding package has been used to progress this work. £3.6 million was specifically allocated to funding the development of the Dublin and Dubs process to support transfers of eligible children to the UK, including training for those working with unaccompanied children, family tracing and targeted information campaigns.

We continue to work with the French authorities to transfer eligible children under section 67 of the Immigration Act 2016 and the Dublin regulation, and transfers are ongoing.

We heard evidence from Safe Passage that a very low number of unaccompanied refugee children have been brought to the UK under the Dubs scheme. Safe Passage criticised the Government's decision to "arbitrarily impose a cap" on that scheme of 480 places, and highlighted that only 220 Dubs children have arrived in the UK so far. Why has the Government only resettled 220 unaccompanied children through the Dubs scheme and why was the scheme capped at 480 places?

When does the Government expect to resettle children in the remaining 260 places and what action is it taking to expedite this process?

The Government is resolutely committed to transferring the specified number of 480 unaccompanied children under section 67 of the Immigration Act 2016 ('the Dubs Amendment') as soon as possible. The Government did not impose an arbitrary cap on the number of children we committed to relocating under the Dubs Amendment.

During the passage of the Immigration Bill through Parliament in 2015 and 2016, there were robust debates about the issue of supporting unaccompanied children in Europe as well as those much closer to conflict regions. However, Parliament rejected the proposal to relocate 3,000 unaccompanied children to the UK from Europe. The Dubs amendment was only approved by Parliament when it made clear that the Government would commit to relocate a specified number of unaccompanied children, to be determined by the Government in consultation with local authorities. The Government's consultation, which has been endorsed by the courts, determined the total figure to be 480.

Over 220 children were transferred to the UK under section 67 when the Calais camp was cleared in late 2016. Since then we have been making continuous 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 relocation of eligible children to the UK is dependent on the availability of appropriate care placements in local authorities, who have faced significant pressures in recent years in caring for an increasing number of unaccompanied asylum seeking children (UASC) from spontaneous arrivals.

In 2018 alone, the UK received 2,872 asylum claims from unaccompanied children, which represents 15% of all UASC claims lodged in EU countries in 2018; only two other EU Member States received more UASC than the UK—Germany and Italy. Responsibility for their care falls to local authorities, and the Home Office recognises the highly valuable work that they do to support UASC. That is why, in May this year, we increased the funding they receive as a contribution to the costs of looking after these children.

We heard evidence from Safe Passage that the average wait for a positive response to a request by unaccompanied children in Calais to join families in the UK increased from 10.98 days in 2016 to 111.31 days in 2018. It has been suggested that the decentralised structure of the programme contributed to the delay, as local government actors struggled to communicate with the French government. In addition, there was a request by the French Government to not process applications outside of the Dublin system, until a few weeks before the Calais camps were set to close. Can you confirm this information and explain why there has been an increase in processing times?

The Dublin III Regulation allows for unaccompanied children who are seeking asylum in Member States, including France, to transfer their asylum claim to another Member State and reunite with family who are legally residing there. There is an agreed eleven-month process under which a request by a Member State to ‘take charge’ of a child’s asylum claim can be lodged, decided and in the event of a positive decision a transfer of that person completed.

With regards to lodging Take Charge Request (TCR) of an asylum claim, Member States have three months from when the person claims asylum to gather evidence to support a request. The processes involved to make a request vary in all Member States depending on the circumstances of each person who may be eligible to transfer under the Dublin provision, and will also depend on the domestic laws and processes within that govern that country in respect of supporting asylum seekers and unaccompanied children.

Upon receiving a TCR it is important that Member States act in the best interest of the child. We work closely with the Department for Education (DfE) and with local authorities to develop and improve the processes for consideration of a TCR for an unaccompanied child, with a view to achieving the efficient and effective discharge of our obligations under Dublin III, ensuring there is proper regard to the best interests of each child. To make these necessary checks takes time to enact working with appropriate partners. It is only right that sufficient time is dedicated to these important steps.

Our work under Dublin III is much broader than the work around children in Calais. We undertake work with the rest of France and the other 30 participating Member States involved in Dublin for the safe transfer of unaccompanied children, adults and family groups to the UK. In 2016 the work of the UK regarding unaccompanied children seeking to reunite with family under Dublin III was primarily focused on one area in France (Calais) as this is where most of the requests relating to unaccompanied children originated from. However, as time has progressed the number of requests received from other Member States has grown.

For wider context, in 2015, the Home Office received 110 TCR under the family reunion provisions in Dublin III (of which 50 were for unaccompanied children); in 2018 the Home Office received 933 TCRs (of which 249 were for unaccompanied children).

The difference between average processing times in 2016 and 2018 can be explained partly by the uplift in caseload and the make-up of the requests being made, as well as the evolution and improvement of procedures noted above.

As referred to above, the Dublin III regulation is the common legal agreement to transfer an asylum claim from one European Member State to another. To work outside of this agreed regulatory framework needs an agreement between countries to enact. We continue to work collaboratively with all Member States on the safe transfers of children.

Safe Passage also suggested that excessive evidentiary requirements led to incorrect refusals of family reunion applications by the Home Office, and that families and children were not being given the opportunity to respond to negative findings or to provide an explanation about supposed inconsistencies. Meanwhile, the SOGICA Project noted that the burden of proof can be much greater on the claimant. The SOGICA Project advised the UK to implement a UNHCR recommendation to specify that the burden of proof be shared

between asylum claimants and public authorities. What is the Government's response to these concerns? How is the Home Office working to ensure that it manages family reunion applications not just efficiently and effectively, but thoughtfully and with compassion?

The UK takes its responsibilities towards unaccompanied children extremely seriously. This includes our duties towards the safeguarding of children as well as ensuring that their best interests are served. Accordingly, the Home Office works closely with local authorities, Member States and facilitating partners to assess the best interests of the child, trace their family members and verify the claimed family relationship.

Published guidance on the implementation of the Dublin III Regulation makes clear to Home Office decision makers that:

- The best interests of the child must always be a primary consideration when applying the Regulation in family reunion cases;
- When assessing a child's best interests, Dublin States should cooperate with each other taking due account of all relevant factors;
- The evidential standards to be applied to family reunion cases are those specified in the Dublin Regulation and its Implementing Regulations, which includes taking into account both probative and circumstantial evidence, where that circumstantial evidence is coherent, verifiable and sufficiently detailed.

This guidance can be found at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/797216/Dublin-III-regulation-v2.0ext.pdf

There is an established process under the Dublin Regulation's Implementing Regulation whereby the requesting State can ask for a reconsideration of a decision to reject a request and where additional evidence can be provided. Where we reject a TCR, the Home Office provides the requesting State with a full explanation of the reasons in our rejection letter.

The Home Office also recently revised its guidance on the refugee family reunion Immigration Rules, to streamline the process and make it clearer for applicants and sponsors to understand what is expected of them, including the types of documentary evidence that can be provided to support an application. The revised guidance recognises the challenges applicants face in obtaining documents to support their application.

Whilst the onus is on the applicant to show that the relationship with the sponsor is genuine, there are no specific requirements to provide certain types of evidence. We recognise evidence may not always be available, particularly in countries where there is no functioning administrative authority to issue documents such as passports, marriage or birth certificates. Every family reunion application is carefully considered with sensitivity and compassion on its individual merits based on the evidence provided by the applicant and their sponsor. In the last five years, the UK has granted over 27,000 family reunion visa applications.

What is the Government's response to SOGICA's recommendation?

The SOGICA Project requested that the Home Office implement a UNHCR recommendation to specify that the burden of proof be shared between asylum claimants and public authorities. The citation given is to UNHCR's paper

commenting on the European Commission's 2016 Proposal for a Qualification Regulation, with UNHCR placing emphasis on a shared burden of proof applicable in assessing applications for international protection.

We note the comment and the context in which it was given, which is the consideration of a claim to be in need of protection and not the assessment of family relationships. Published guidance makes it clear to decision makers that when considering whether there is sufficient information to accept the relationship in a Dublin III case the standard to be applied is that of the balance of probabilities and they must be mindful of the difficulties that people may face in providing documentary evidence of their relationship.

What is your anticipated timetable for concluding an agreement with the EU on family unity for those seeking asylum or other protection in Europe, as set out in section 17 of the EU (Withdrawal) Act 2018?

The Government is committed to fulfilling the obligation under section 17 of the EU Withdrawal Act 2018 regardless of whether we leave the EU with a deal or not.

The SOGICA Project, which is researching sexual orientation and gender identity claims of asylum, submitted evidence that asylum seekers in the UK were unaware they could claim asylum on the basis of their sexual orientation or gender identity (SOGI). The SOGICA Project recommends that the UK advise all asylum seekers that persecution on the grounds of SOGI, among other grounds, constitutes a legitimate claim to international protection. What information on grounds for claiming asylum does the UK Government provide asylum seekers on its territory? How is this information provided and can it be found at all airports, ports, and UK Visas and Immigration Offices?

The UK Government publishes clear information concerning the eligibility grounds on which individuals may claim asylum in the UK. This can be found on the Government website at the following link <https://www.gov.uk/claim-asylum/eligibility>.

The UK Government also publishes an information leaflet entitled "Information about your Asylum Application." This is available online and is also provided to asylum claimants during screening, including where that claim is made at a port; airport; or the Asylum Intake Unit. It contains clear information about the eligible reasons for applying for asylum in the UK. It further explains what a claimant can expect during the registration of a claim and afterwards. It also provides contact referral details of non-government organisations specialising in assisting claimants who may be presenting an asylum claim based on sexual orientation or gender identity and expression.

Additionally, Migrant Help provide independent advice and guidance to asylum seekers in initial accommodation including providing information relating to the asylum process in the claimant's own language. Information about the asylum process is also available, from their website, in 16 languages for those individuals who are staying with family, friends or who have their own accommodation - <https://www.migranthelpuk.org/advice-and-guidance>. The asylum advice guide consists of six sections. "Section 3: Substantive interview" makes it clear that refugee status can be granted where a claim is made in connection with the claimant's sexuality. The English asylum advice guide as well as the translated versions are available from this page.

Application data does not suggest that asylum seekers are unaware that sexual orientation is a ground for claiming asylum in the UK, although multiple factors will impact on the number of applications. Published Home Office statistics indicate that during the three years 2015, 2016 and 2017, a total of 5,916 asylum applications where a sexual orientation basis was recorded were lodged in the UK, representing 6.6% of all asylum applications received in this period. The data show an increasing proportion of asylum applications recording a sexual orientation basis over this period, from 5.4% of all applications in 2015 to 7.2% in 2016, and then remaining at this level (7.3%) in 2017. The UK does not currently publish statistics on gender identity-based asylum claims.

The UK has a proud record of providing protection to individuals fleeing persecution based on their religious belief, sexual orientation and gender identity and are committed to delivering an asylum system that is responsive to all forms of persecution. All asylum claims lodged in the UK are carefully considered on their individual merits, against a background of relevant case law and up to date country information.

Published guidance on considering asylum claims based on sexual orientation and gender identity exist for Home Office case workers. Both are currently being reviewed.

Additionally, we would also expect the claimant's independent legal representative and / or immigration adviser to advise their client about the grounds that may constitute a protection claim and advise their client that they need to inform the Home Office and themselves of all reasons why they cannot return to their home country.

We have heard that there is effectively a 'two-tier' support system for refugees in the UK, with people resettled under VPRS having a much better resettlement and integration experience than those who make their first claim for asylum in the UK.

What is your response to this suggestion, and what steps are you taking to ensure that everyone granted asylum in the UK is treated equally?

Why has the Government been unable to replicate best practice from the VPRS to ensure that all those granted protection in the UK are treated equally with regard to accommodation, funding, and other integration support? How will lessons learned from the VPRS be used to inform the development and operation of the recently announced new UK global resettlement scheme?

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.

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.

The Integrated Communities Action Plan, published in February 2019, set out our commitment to increase integration support for all refugees in the UK. We will focus on supporting refugees with English language, employment, mental health, and cultural orientation to life in the UK.

The Vulnerable Persons and Vulnerable Children's Resettlement Schemes (VPRS and VCRS) are being evaluated through a programme of quantitative data work

and qualitative research with refugees and key delivery partners, including local authorities. The findings will help shape ongoing improvements to the delivery of the VPRS and VCRS schemes and good practice will be incorporated into the design and operation of the new global resettlement scheme.

We will also continue to apply good practice from the VPRS to integration support for all refugees. Additionally, we will share good practice more widely with civil society, local authorities and other stakeholders, as we recognise the work they do in refugees is key to enabling integration for all refugees.

After the UK leaves the EU it will need to negotiate new bilateral agreements with some third countries to facilitate the return of irregularly staying migrants. Refugee Rights Europe recommends that the UK should carry out human rights impact assessments on third countries before entering into return agreements with them.

Does the UK carry out human rights impact assessments on third countries before concluding return agreements with them? Will the UK seek to replicate the EU's return agreements with third countries?

All asylum and human rights claims are carefully considered on their individual merits in accordance with the UK's obligations under the 1951 United Nations Convention Relating to the Status of Refugees and the European Convention on Human Rights. The Home Office closely monitors developments in all countries of return and takes decisions on a case-by-case basis in the light of international obligations and the latest available country policy and information notes.

There may be some countries where it is difficult to remove to because of the country situation, or where there may be legal barriers to removal. We make returns to countries where appropriate and on a case by case basis. Returns agreements are a practical way to set out the removals process with a country of return.

The UK has various bilateral agreements with key third countries that assist in expediting the return of individuals; the EU Readmission Agreements supplement these agreements and provide us a wider range of levers to facilitate returns. The UK will prioritise transitioning EU Readmission Agreements post EU exit in order to maintain, and where possible enhance, the UK's capability to return individuals.

In a 'no deal' scenario, there is likely to be a significant build-up of traffic around Calais—and other European ports—which could make it easier for migrants to board vehicles and vessels bound for the UK.

What preparations have Border Force made to deal with any consequential rise in 'clandestine entrants' to the UK? How would such migrants be detected if—as promised by the UK Government—for a temporary period roll-on/roll-off traffic will be allowed to drive straight off ferries and Channel Tunnel trains by filling in a frontier declaration beforehand?

The security of the UK border is paramount and Border Force have extensive preparations in place to mitigate for emerging threats if we leave the UK without a deal. We have detailed plans to minimise the risk of-and detect-clandestine activity.

This includes having mobilised a fully-mobile national readiness taskforce (c300 staff) who can be deployed against emerging risks and capability to increase the number of body-detection dogs.

Advance frontier declarations relate to customs activity and will not affect our vehicle screening and search capability or our ability to secure the Border. We continue to invest heavily in security detection systems and adapt process in readiness for our exit including maintaining enhanced detection screening at juxtaposed locations.

UK NGOs currently receive funding through the EU Asylum, Migration and Integration Fund. After the UK leaves the EU, and no longer has access to EU funding programmes, how will the Government replace this funding stream for asylum and migration programmes?

The Government recognises the vital role that NGOs have played in supporting asylum and migration programmes and is considering a range of sources to fund future NGO activity following the UK's departure from the EU.

Rt Hon Brandon Lewis MP

Minister of State for Security and Deputy for EU Exit and No Deal Preparation