



# HOUSE OF LORDS

European Union Committee

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The Rt Hon Priti Patel MP  
Secretary of State for the Home Department  
Home Office  
2 Marsham Street  
London SW1P 4DF

9 September 2019

Dear Home Secretary,

In May this year, the Lords EU Home Affairs Sub-Committee launched an inquiry into future UK-EU asylum cooperation. The oral and written evidence received as part of this inquiry can be found on our website: <https://www.parliament.uk/eu-home-affairs-subcommittee>.

We concluded our evidence programme in July and had planned to publish our report in the coming weeks. The forthcoming prorogation of Parliament has caused us to change these plans, and we have decided to send the key findings of our report to you now. The Committee believes that the issues and concerns raised by our inquiry are too important to wait.

The Committee held an evidence session with the previous Immigration Minister, Caroline Nokes MP, on 13 March 2019, which focused on EU work migration but briefly covered the implications of Brexit for refugees and asylum seekers, and the possible future framework for UK-EU asylum cooperation.

After deciding to launch a formal inquiry into UK-EU asylum cooperation in May, we invited successive Immigration Ministers to give evidence to us, so that we were fully informed about the Government's policy. They declined, and nor have we had a reply to a letter sent in July seeking written evidence.

You will know that the Committee has a long-standing interest in the area of asylum and international protection, and this inquiry has raised very real concerns about how Brexit could affect refugees and asylum seekers, and in particular separated families and unaccompanied children. The Government's failure to give evidence means that there is little to no up-to-date public information available on how you are working to ensure that these vulnerable people who have already experienced trauma do not face additional suffering as a result of Brexit.

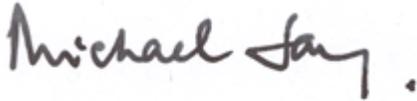
We draw your attention to the following extracts from the Ministerial Code:

"Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their departments and agencies ... Ministers should be as open as possible with Parliament and the public, refusing to provide information only when disclosure would not be in the public interest".

We do not consider that the context of Brexit, or any change in office holder, provides sufficient justification for failing to uphold these duties.

I am copying this letter to Hilary Benn MP, Chair of the Commons Exiting the EU Committee; Yvette Cooper MP, Chair of the Commons Home Affairs Committee; and James Rhys and Elizabeth Hunt, Clerks to those Committees.

Yours sincerely,

A handwritten signature in dark ink that reads "Michael Jay". The signature is written in a cursive style with a period at the end.

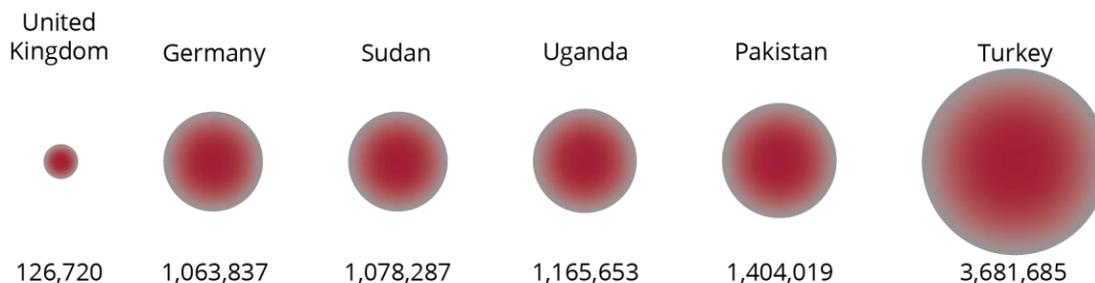
Lord Jay of Ewelme  
Chair of the EU Home Affairs Sub-Committee

## SUMMARY OF REPORT

### I. Refugees and asylum seekers in the UK

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 – with about 80% of refugees living in countries neighbouring their countries of origin. UNHCR puts the number of refugees in the UK at 126,720. This is a significant number but pales in comparison to top refugee-hosting countries, as illustrated below.

#### ***Refugee numbers in the UK compared to the top refugee-hosting countries in 2018***



Source: UNHCR, [Global Trends: forced displacement in 2018](#), pp 65-68 (June 2019)

The UK also receives lower numbers of asylum seekers in comparison to other European countries. In 2018 the UK received approximately 30,000 asylum applications from 'main applicants' (not including dependents). This is compared to 184,000 received in Germany, 120,000 in France, and 67,000 in Greece, during 2018.

Asylum policy in the UK is shaped by its obligations under the 1951 UN Refugee Convention (the Refugee Convention), and its 1967 Protocol, which provide the foundation of international obligations relating to the protection of refugees. During the inquiry, witnesses noted that the UK had played a leading role in the development of standards of refugee protection at the international level, including in drafting the Refugee Convention and supporting the recent UN Global Compact on Refugees agreed in December 2018.

Domestic asylum policy is also influenced by the UK's membership of the EU and selective participation in the Common European Asylum System (CEAS), which seeks to establish common standards for the reception and treatment of asylum seekers across the EU. Within the CEAS, the UK takes part 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. It is also bound by the first phase of CEAS Directives on reception conditions, asylum procedures, and qualification for international protection (adopted between 2000 and 2006), but chose to opt-out of the 2012-13 'recast' versions of these instruments which sought to harmonise—as opposed to establishing minimum—standards.

The CEAS provides one route for asylum seekers to come to the UK—i.e. if they are transferred there via the Dublin System—but there are several other ways that people in need of international protection might seek refuge in the UK. These include:

- Asylum applications from people 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;
- Refugee resettlement: a 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;
- Family reunion: where the partners and children of people with refugee status may apply to join them in the UK;
- The ‘Dubs scheme’ for unaccompanied refugee children; and,
- Humanitarian protection: a system of granting international protection on humanitarian grounds to people who do not qualify for refugee status.

## **2. Brexit implications**

### ***UK-EU cooperation***

In March 2019, before we launched our present inquiry, 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:

- operational cooperation;
- 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, and *vice versa*;
- a continued strategic partnership to address the drivers of illegal migration;
- UK participation in international dialogues to tackle illegal migration upstream; and,
- the option to align and work together on potential future funding instruments.

Our inquiry therefore considered the implications of the UK 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.

We concluded that 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. Of particular concern is the 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. We were moved by the evidence we heard on this from SOS Children's Villages UK:

"[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."

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.

Asylum standards in the UK will only be affected by Brexit insofar as they relate to the first phase of the CEAS. Several of our witnesses expressed concern about the loss of procedural protections set out in EU asylum rules, and the possibility of "retrograde steps" without the overarching EU framework of standards. Nonetheless, we are reassured that the continued application of the Refugee Convention and the European Convention on Human Rights should ensure there is no diminution in the treatment and protection of asylum seekers in the UK.

**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.**

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—which would allow the UK to continue considering cases where a Dublin transfer request had already been received or sent prior to a 'no deal' Brexit—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 with EU Member States***

The UK has particularly close bilateral relations on border cooperation with France and 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.

These arrangements—which are essential to the effective management of UK borders, including asylum and migration flows—are underpinned by bilateral and trilateral (not EU) 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.

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.

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 our previous reports on *Brexit: future UK-EU security and police cooperation* and *Brexit: the proposed UK-EU security treaty*.<sup>1</sup>

**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.**

### **3. Future UK-EU asylum cooperation**

#### ***A new UK-EU strategic relationship?***

Witnesses agreed that the UK and the EU should continue to cooperate on asylum matters after Brexit, as illustrated by the following quote from UNHCR's Representative to the UK, Rossella Pagliuchi-Lor:

"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."

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<sup>1</sup> 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)

The Committee concluded that there is a clear shared interest in maintaining UK-EU asylum cooperation after Brexit, to support the effective management of national borders and regional migration flows across 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.

We examined the relationship of Norway—a non-EU but Schengen Associated country—with the CEAS, to see if this could provide a useful model for future UK-EU asylum cooperation, but concluded that the UK is unlikely to be able to replicate these arrangements after Brexit, as unlike Norway the UK is not, and has no intention of becoming, part of the Schengen Area. Consequently, the new UK-EU relationship in this area will need to be set out either as part of any wider association agreement, or in a specific asylum cooperation agreement.

**We are concerned by the conspicuous lack of any reference to future asylum cooperation in the November 2018 Political Declaration. Whatever the form of the future framework for cooperation, it is vital that refugees and asylum seekers are considered in any agreement on the future UK-EU relationship.**

In terms of the key features of future UK-EU cooperation, the Committee concluded that the Dublin System should be used as a starting point, and that the relationship should 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. A returns mechanism based on the principle that asylum seekers should be returned to the first safe EU country they reached to have their claims processed would be of particular interest to the UK, as its geographic location—and non-membership of Schengen—makes it difficult for asylum seekers to reach without earlier being apprehended and fingerprinted in another Member State.

The relationship should have at its heart a shared agreement on, and commitment to uphold, minimum standards for refugee protection, asylum procedures, qualification, and reception conditions. Agreements on data protection and the respective jurisdiction of EU and UK courts will be needed to facilitate these arrangements, as we have noted in previous reports on *Brexit: the EU data protection package* and *Dispute resolution and enforcement after Brexit*.<sup>2</sup>

**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.**

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<sup>2</sup> European Union Committee, [Brexit: the EU data protection package](#) (3rd Report, Session 2016–17, HL Paper 7) and [Dispute resolution and enforcement after Brexit](#) (15th Report, Session 2017–19, HL Paper 130)

The question of ‘responsibility sharing’ (sometimes known as ‘burden sharing’)—that asylum seekers should be transferred from EU countries which receive disproportionate numbers of arrivals to other Member States—has proven contentious. Negotiations on the proposed reform of the Dublin System (Dublin IV) which includes a mandatory relocation mechanism have stalled, holding up agreement on the wider package of CEAS reforms tabled in 2016.

The UK Government has firmly opposed any kind of responsibility sharing measures relating to asylum seekers, voluntary or mandatory, a position which was reiterated by the previous Immigration Minister when she appeared before the Committee in March. Despite this, several witnesses thought that the UK should be prepared to participate in a Europe-wide policy, and take its ‘fair share’ of asylum seekers rather than letting the burden fall on countries like Germany, Sweden, Italy and Greece. Dr Natasha Zaun, of the London School of Economics, thought that Dublin IV would probably end up containing voluntary forms of responsibility sharing, rather than a mandatory corrective allocation mechanism. She suggested that the UK could wait until the Dublin IV proposal was agreed before deciding whether to seek to participate in it after Brexit.

**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. 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***

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

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

**We 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 migrants seeking to travel to the UK.**

Finally, while bilateral relationships are important in managing migration flows, we do not believe they can replicate the level of cooperation the Government has said it would like to maintain with the EU after Brexit. Moreover, as noted by one of our witnesses, immigration barrister Colin Yeo:

"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]."

**In our view, 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.**

#### **4. Future UK asylum policy**

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. Our visit to Norway in June 2019 gave us a further opportunity to consider how UK policy might be improved, based on lessons from the Norwegian asylum system.

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. In this context, we decided that the report should consider the evidence we heard on the shortcomings of the UK asylum system, and on priorities for its future improvement.

We were told that the UK had a proud history of offering sanctuary to those in need but that this reputation had been damaged by restrictive family union policies and the, at times, inept administration of the UK asylum system. In the context of the Government's wider review of future UK immigration policy, we believe that Brexit provides an opportunity to develop a more effective and humane asylum policy. Our recommendations for future UK asylum policy are set out below:

**The UK's refugee family reunion rules should be expanded to allow unaccompanied refugee children in the UK to sponsor their parents or other close relatives to join them. This reflects the conclusion of our 2016 report, *Children in crisis: unaccompanied migrant children in the EU*<sup>3</sup>, 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.**

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<sup>3</sup> European Union Committee, [Children in crisis: unaccompanied migrant children in the EU](#) (2nd Report, Session 2016–17, HL Paper 34)

**The definition of family members eligible for reunion should be expanded to include adult children. This 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 an 18- or 19-year-old child in a dangerous country of origin, with no other family to protect them.**

**As we recommended in our 2016 report, a guardianship service should be established in England and Wales for all unaccompanied migrant children, to oversee their participation in the asylum process and identify their best interests.**

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

**We welcome the Government’s plan to consolidate existing resettlement programmes in a single, global refugee resettlement programme from 2020. As is the case in Norway, the new programme should offer the same package of financial and integration support to all recognised refugees, regardless of the route by which they came to the UK. This will help to address the current ‘two-tier’ system of refugee support in the UK, whereby local authorities receive more generous financial aid to support refugees who arrive through a resettlement programme than those who arrived spontaneously as an asylum seeker.**

**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 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.**

**The new UK resettlement programme should build on best practice from previous 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 local authorities new to refugee resettlement to participate in the programme, and by facilitating the exchange of information and lessons learned between local authorities.**

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

**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.**

**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.**