

# **Family Friendly?**

## **The impact on children of the Family Migration Rules: A review of the financial requirements**

**Commissioned by the Children's Commissioner for England from  
Middlesex University and the Joint Council for the Welfare of Immigrants**

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## Foreword by the Children's Commissioner for England

Globalisation has made a profound difference to our lifestyles. We travel more, we work abroad more, and we holiday outside of our own countries and more people from other countries of the world travel to our country, as visitors, students and workers. When we carry out these ordinary modern-day activities, extraordinary things sometimes happen – we fall in love with the person we want to share our lives with. And sharing a life will mean for most people having children together and raising them in the family.

Having the good fortune to be brought up in a loving and caring family is a basic human right that we all can understand and relate to. The bonds we establish with our parents are integral to our upbringing and shape every aspect of life to come. Our parents are role models that have an unparalleled influence on how we develop through childhood and throughout life. For these reasons, the United Nations has agreed that the family is entitled to protection by both society itself and the State. The Universal Declaration of Human Rights secures the right for men and women of full age, without limitation due to race, nationality or religion to marry and found a family.

The changing patterns of our lives have brought challenges for governments seeking to implement their responsibilities. On the one hand to respect the inalienable rights of citizens and those settled in a territory to found a family, and on the other, to ensure that rights enshrined in policy and law are upheld. The experience of children and families in this report suggests the balance is not right currently in the UK.

The evidence presented in this report shows that at the current time a significant number of children and families are not able to live together in the UK because of a recent change in Immigration Rules which requires families to demonstrate income levels far higher than was previously necessary, and far higher than is viable for many. As a consequence, thousands of couples committed to building a family life together are being kept apart and thousands of children, mainly citizens of the UK, are being deprived of a parent or, where forced into exile abroad, deprived of their wider family in the UK.

This report highlights the experiences and voices of these families and their children who are suffering as a result. Part of my role as Children's Commissioner is to ensure that children's experiences, voices and interests are brought to the attention of governments and policy makers. This report does so powerfully. Having considered those voices, it also makes recommendations to maintain necessary border controls but ensure that the best interests and human rights of children and their families are fully respected and realised.

**Anne Longfield**

Children's Commissioner for England

*“When she was younger I used to tell her that I’m sending an aeroplane and then you will come to England. My wife told me one day, ‘Don’t tell that again’. I asked why. She said because while she was sleeping an aeroplane came over our house and my daughter heard, she woke up and ran out from sleeping, ran out and she called, ‘We are here, we are here, we want to go to our dad’. When I called she cried and she said, ‘the aeroplane that you sent just came here and they did not know us, they went, please tell them that we are here waiting for you.’”*

**Father, daughter aged 9 years**



## Glossary

<b>Appendix FM</b>	Appendix FM is an appendix to the Immigration Rules (see below) which sets out the requirements for people who want to come to or stay in the UK based on family life with a British citizen, settled person or refugee. It came into force on 9 July 2012 and replaced part 8 of the Immigration Rules.
<b>Appendix FM-SE</b>	Appendix FM-SE is an appendix to the Immigration Rules (see below) which outlines the specified evidence required in applications under Appendix FM to come to or stay in the UK based on family life with a British citizen, settled person or refugee.
<b>Entry Clearance</b>	Foreign nationals who are subject to immigration control must obtain entry clearance to enter the UK for most purposes, including as the family member of a British citizen or settled resident. Decisions on applications for entry clearance are decided by Entry Clearance Officers (see below) who are employed by UK Visas & Immigration (see below). Where entry clearance is granted, an individual will be issued with a visa valid for a certain period of time, which may also contain restrictions on their ability to work or study in the UK. A person who has entry also needs 'leave to enter' (see below) which is usually granted at the same time as entry clearance. The ultimate decision on entry is made by an Immigration Officer at the port of entry at the port of entry under paragraph 2A of Schedule 2 to the Immigration Act 1971.
<b>Entry Clearance Manager</b>	Where an application for entry clearance is refused by an Entry Clearance Officer (see below), a person may in certain circumstances request a review of his or her application by an Entry Clearance Manager (called an "administrative review"). Entry Clearance Managers are also UK Visas and Immigration (see below) staff.
<b>Entry Clearance Officer</b>	An employee of UK Visas and Immigration (see below) who considers visa applications and makes an initial decision on whether entry clearance is granted or refused.
<b>European Convention on Human Rights (ECHR)</b>	The European Convention on Human Rights (ECHR) (formally the Convention for the Protection of Human Rights and Fundamental Freedoms) is an international treaty to protect human rights and fundamental freedoms in Europe. The main rights contained in the ECHR are binding on government bodies, courts and tribunals under the Human Rights Act 1998.
<b>European Economic Area (EEA)</b>	The EEA (European Economic Area) comprises all the EU member states plus Iceland, Liechtenstein and Norway. By agreement, the free movement rights of EU citizens are extended to nationals of all

EEA states. Switzerland is not part of the EEA but has a similar arrangement. EEA nationals therefore do not require entry clearance or leave to enter to live, work and study in the UK.

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**Financial Requirements** In this report the ‘financial requirements’ refers to the requirements contained in paragraphs E-ECP.3.1 and E-ECP.3.2 of Appendix FM to the Immigration Rules (see below) for British citizens or settled persons who wish to sponsor a non-EEA family member to live in the UK.

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**Immigration Rules (the ‘Rules’)** The Immigration Rules are rules of practice governing the admission and stay in the UK of non-EEA nationals in the UK. Created under the Immigration Act 1971, they are amended regularly, often a number of times a year.

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**Impact Assessment** Policy Impact Assessments (IAs) are formal, evidence-based procedures undertaken by the UK government that assess the economic, social, and environmental effects of public policy.

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**Indefinite Leave to Remain** Indefinite Leave to Remain refers to the immigration status of an individual where there are no time restrictions on their stay in the UK. A person with Indefinite Leave to Remain and who is ordinarily resident in the UK has settled status.

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**Leave to enter** Leave to enter grants a person subject to immigration control permission to enter the UK for a period of time, subject to conditions outlined in the type of ‘leave’ granted. The time limit of any Leave to Enter depends upon individual circumstances and is provided to the applicant in person. Leave to enter is usually granted at the same time as entry clearance but the ultimate decision of entry is made by an Immigration Officer at the port of entry under paragraph 2A of Schedule 2 to the Immigration Act 1971.

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**Leave to remain** The legal condition of a person who has been granted permission to live in the UK for any period of time, subject to any restrictions placed upon them as a condition of their ‘leave’.

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**The Income Threshold** In this report, the income threshold refers to the requirement for British citizens or settled persons who wish to sponsor a non-EEA partner to show a gross annual income of at least £18,600 per annum, with an additional £3,800 pa for the first child and an additional £2,400 pa for each additional child who is sponsored (so not children who are British citizens, EEA nationals or settled in the UK). The conditions for meeting the income threshold are contained in paragraphs E-ECP.3.1 and E-ECP.3.2 of Appendix FM to the Immigration Rules.

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<b>Section 55 duty (s.55)</b>	Section 55 (s.55) of the Borders, Citizenship and Immigration Act 2009 (UK Border Act) implements the Government’s legal obligation to treat the best interests of children as a primary consideration (the ‘best interests principle’) when implementing rules and policies and when making individual decisions involving immigration and nationality. The best interests principle also forms part of the Government’s obligations under Article 8, right to respect for private and family life, of the European Convention on Human Rights (ECHR). The s.55 duty applies to all children in the UK irrespective of immigration status and should be applied to children who are abroad but are affected by an immigration decision to refuse them or their parent leave to enter the UK.
<b>Settled person</b>	A person who is settled in the UK does not have any restriction on the amount of time they can remain in the UK. There are also no restrictions on work or study in the UK. A person with Indefinite Leave to Remain in the UK and who is ordinarily resident in the UK is a settled person.
<b>The Sponsor</b>	In this report, ‘sponsor’ refers to a British citizen, refugee, or settled person who is supporting an application by a family member subject to immigration control (such as a non-EEA national) to join them in the UK.
<b>UK Visas and Immigration (UKVI)</b>	UK Visas and Immigration (formerly part of the UK Border Agency) is a division of the Home Office responsible for making decisions on applications to come to or remain in the UK.
<b>United Nations Convention on the Rights of the Child (CRC)</b>	The United Nations Convention on the Rights of the Child (CRC) is a human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children. The CRC defines a child as anyone under the age of eighteen.

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## Abbreviations

<b>APPG</b>	All Party Parliamentary Group on Migration
<b>CRC</b>	United Nations Convention on the Rights of the Child
<b>ECHR</b>	European Convention on Human Rights
<b>ECM</b>	Entry Clearance Manager
<b>ECO</b>	Entry Clearance Officer
<b>EEA</b>	European Economic Area
<b>MAC</b>	Migration Advisory Committee
<b>s.55</b>	Section 55 of the UK Borders, Citizenship and Immigration Act 2009
<b>UKVI</b>	UK Visas and Immigration

## 1. Introduction

This report explores the impact on children of the financial requirements of the Immigration Rules (the 'Rules'), in particular, the minimum income threshold of £18,600 per annum which came into force on 9<sup>th</sup> July 2012. The Rules govern the admission of spouses and partners from outside the European Economic Area.

The Children's Commissioner for England has received scores of letters from parents and children who are unable to meet the financial requirements and as a result are forced to separate or live outside the UK while the sponsor tries to meet the income threshold. This has resulted in upheaval and separation for thousands of families. Children have become the unintended victims of the financial requirements. This report highlights the anxiety, stress and detriment caused to them as they are forced to separate from a parent and their family life is torn apart.

The report examines the current financial requirements, both the minimum income requirement and the ways in which it can and cannot be met. It assesses how and why the Rules were implemented, and whether the Government's stated aims behind the Rules have been achieved. This report is concerned solely with the financial requirements and does not evaluate other aspects of the family migration rules such as the English language requirement or suitability criteria.

The report highlights concerns about financial requirements. The income threshold a UK sponsor has to establish before being able to sponsor his or her partner is the highest, relatively speaking, in the world. The Migration Integration Policy Index assessment, an independent comparative study of the integration of migrants in 38 developed countries, found that "Separated families [in the UK] now face the least 'family -friendly' immigration policies in the developed world."<sup>1</sup>

The report includes a detailed assessment of the impact of the financial requirements on families and children. It estimates that, at present, at least 15,000 children have been affected by the requirements. This is the first in-depth study of the direct impact of the financial requirements on children's welfare.

Data for the report was gathered by asking affected families with children to complete a survey. Of the responses received 100 were valid. These captured a variety of situations and socio-demographic characteristics (age, gender, employment, income earned, region of residence in UK, country of residence abroad). Twenty families, including the children themselves wherever possible, were interviewed in-depth. The findings of these questionnaires and interviews are presented together with evidence from an academic expert on child development.

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<sup>1</sup> Huddleston, T., Bilgili, O., Joki, A-L, and Vankova, Z. (2015) *Migrant Integration Policy Index 2015*. MIPEX is concerned with the position of third country national sponsors but, as long term residents and British citizens are subject to the same conditions, their findings are equally applicable to citizen sponsors.

The report also analyses the national and international legal obligations on a state to protect and safeguard the best interests of children. The best interests of children must be a primary consideration in all actions that concern them. The report looks at whether the Immigration Rules as drafted and implemented uphold this duty.

“I asked my son if he would write to the judge and tell him how he feels. He said, ‘If I write it down I’ll start crying and I can’t do that, mum’. He shuts off his feelings because it’s too much for him.”

**Mother, 12 year old son**

## 2. Executive Summary

“Every time I say goodnight to my son, who is now over a year old, he bursts into uncontrollable tears because he thinks he won't see me for weeks. You have no idea how that feels.”

**Father, son aged 1 year**

“I am a single mother who has to look after my son as well as provide for my family. I did not want or choose to be in this position but I am being forced to by our government.”

**Mother, son aged 2 years**

### Key Findings:

- It is estimated that at least 15,000 children have been affected by changes to the financial requirements of the Immigration Rules implemented in 2012.
- Children, most of whom are British citizens (79% in the survey carried out for this report), are suffering distress and anxiety as a result of separation from a parent. This is compounded by the overall stress, anxiety and practical difficulties faced by the family unit.
- The financial requirements affect British citizens and long term residents who have started families with foreigners from outside the European Economic Area (EEA) and who wish to live in the UK. The income level would not be met by almost half the adult population and many families with children may never be able to meet them. The threshold is too high and is discriminatory. British citizens who have lived and worked abroad and formed long-term relationships abroad are particularly penalised and find it very difficult to return to the UK.
- The financial requirements do not meet their stated policy aims; they do not reduce reliance on the welfare state, the fiscal benefits are overstated and they do not promote integration and social participation.
- The Immigration Rules and accompanying guidance do not comply with the duty to safeguard and protect the best interests of all children in the UK. Several categories of children in the UK are not protected and the Rules as drafted breach national and international law.
- Decision-making routinely fails to adequately consider the best interests of children and decision letters are often legally and factually incorrect.

## **2.1 Background**

This report examines the impact on children of the financial requirements introduced under the Immigration Rules (the 'Rules'). The Rules outline the requirements for British citizens and settled persons (those with indefinite leave to remain in the UK) who wish to 'sponsor' a partner from outside the European Economic Area (EEA) to live in the UK. One of the most far-reaching changes to the Rules was the introduction of the income threshold. Sponsors are now required to earn at least £18,600 per annum (pa) to sponsor a partner. Most of the children affected are British citizens or residents, but where a non-British child is also to be sponsored, the income threshold rises to £22,400 pa with an additional £2,400 pa for each further child.

The background to the changes to the financial requirements was a commitment to reduce net migration to the 'tens of thousands'. Family migration was included in this target. The specific policy objectives of the changes to the family migration rules in 2012 were to reduce the burden on taxpayers, promote integration and prevent and tackle abuse of the family migration route.

The people who have been affected by these Rules are British citizens and settled residents who have formed long-term relationships with non-EEA nationals. This is usually a result of travel, study or work abroad. Cross-cultural relationships are commonplace today and the children of these relationships should not be penalised. British citizens who have chosen to live and work abroad face particular difficulties as the financial requirements make returning with a partner and children to the UK very difficult.

Over the last three years, evidence has emerged of the serious impact on families prevented from living together in the UK. Families have been separated, with sponsors remaining in or returning to the UK by themselves in order to try to satisfy the financial requirements. This has resulted in a large number of children being separated from a parent and in some cases also from siblings. Evidence from families reveals the devastating short and long-term impacts on children. It is clear from the Impact Assessment and other documents published by the Government that it did not anticipate this impact on children.

## **2.2 Research**

The empirical evidence of the effects of the financial requirements on children and their families has been gathered from 100 questionnaires submitted to the Children's Commissioner for England between September 2014 and July 2015, and 20 semi-structured interviews undertaken with affected families. These include interviews with 11 children between the ages of three and twelve years and with 27 parents.

A review of literature relating to the financial requirements has been carried out, including the Government's consultation and impact assessment documents, Migration Advisory Committee (MAC) reports, and evidence submitted to the All Party Parliamentary Group on Migration (APPG).

There has also been a detailed consideration of the UK's national and international legal obligations pertaining to children. In addition, 11 decision letters refusing a grant of leave to remain or enter the UK as a partner have been analysed to ascertain whether decision-making reflects the UK's legal obligations towards children.



### **2.3 Aims**

The aim of this report is to provide a detailed assessment of the impact of the financial requirements on children, young people and families and in particular on the enjoyment by children of their rights under the United Nations Convention on the Rights of the Child (UNCRC). The report is concerned solely with the financial requirements and does not evaluate in any detail other aspects of the Immigration Rules, such as the English language requirement or suitability criteria.

The overarching aim is to contribute to achieving a situation where children's best interests are given primary consideration in the family migration system.

### **2.4 The Effect of the new financial requirements on children and families**

This report estimates that at least 15,000 children have been adversely affected by the financial requirements in the three years following its implementation. Most of these 15,000 (or more) will be or have been separated from one parent. In a few cases, the family is still together but unable to return to the UK. The vast majority of these children will be British citizens. As this report shows, the only feasible way for them to return is for the family to split up for a period of more than six months. Children living separated from a parent in this way have often suffered behavioural and emotional difficulties and have experienced stress and anxiety.

Literature on separation and child attachment theory demonstrates that children benefit from stable relationships with parents and caregivers and separation from either parent can be harmful. Security of early attachments has been shown to be particularly vital for young children's long-term wellbeing. The most common emotional and behavioural problems, reported by parents during the course of the research, can be summarised as follows:

- Children could become clingy and dependent on one parent, suffering from separation anxiety well beyond the age at which this expected
- Children become angry and disobedient
- Younger children often throw more tantrums, particularly when they cannot be with or speak to the other parent
- Older children become more aggressive, including towards their peers and at school
- Some children show signs of depression
- Children's sleep is often disrupted and they have some night terrors or wet the bed
- Children's eating patterns could change, with under-eating, increased fussiness or comfort-eating reported
- Children's peer relationships are sometimes adversely affected and they can become socially isolated and withdrawn

- Children disengage from the absent parent, refusing to talk to them and rejecting them when they are present
- Children feel guilty or think they are to blame for the parent's absence.

Section 4 of the report discusses the impact on children in full.

## **2.5 Problems with the financial requirements**

The problems associated with the financial requirements are discussed in Section 5 of the report and are summarised here:

- The income threshold is 138% of the minimum wage. A large section of the working population do not have an income level this high
- In relative terms, the UK income threshold is the highest in the world and is the second highest in absolute term
- It particularly discriminates against women, young people and those living outside London and the South East where wages are lower
- The financial requirements are inflexible. They usually only take into account the sponsor's income during the period before the application is made and do not look at the future trajectory of the family, the applicant's earning capacity or at other sources of support that may be available.<sup>2</sup>
- Rules on savings are onerous. Threshold levels for savings to be taken into account are high and savings must be held in instant access accounts.
- If the family has been living overseas, the income threshold must have been earned by the British citizen in the overseas country, irrespective of local wage levels, and the sponsor must also have an established business or a suitable job offer in the UK.
- Evidential requirements are demanding. Applicants and sponsors must produce a vast amount of evidence to an exacting standard
- Applications are expensive. This report calculates that the total costs for a single applicant to move from application to settlement are likely to exceed £6,000. This figure increases if there are additional applicants such as non-citizen children.
- Applicants who cannot meet the financial requirements are refused visitor visas and cannot be with their children and partners for even short periods of time.

The financial requirements have two stated aims: reduction of reliance on welfare benefits by families containing a migrant partner and encouraging the integration of migrant partners. This report shows that the financial requirements do not reduce reliance on welfare by migrant spouses. The overwhelming majority of projected welfare savings

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<sup>2</sup> The applicant's income from employment or self-employment will only be taken into account if the applicant is already working legally in the UK. Some types of non-employment income (e.g. pension income) may count.

claimed in the Government's Impact Assessment relate to child benefits and are not connected to the admission of the migrant partner. The report shows that the financial requirements force some families to rely on benefits because the British parent becomes a sole parent. This would not happen if the partner were admitted. In general, the fiscal benefits of the Rules appear to have been substantially overestimated. Furthermore, there is no evidence that the financial requirements enhance the integration of migrant partners but there is evidence that the social participation of British sponsors has been reduced due to the pressures of trying to meet the financial requirements over a protracted period.

## **2.6 The Government's legal obligations to children**

The Government is under a legal obligation to treat the best interests of children as a primary consideration (the 'best interests principle') when implementing rules and policies and when making individual decisions. The legal requirements are dealt with in section 6 of the report. The obligation originates in the Convention on the Rights of the Child (CRC) of which Article 3, which contains the best interests principle, is an overriding obligation. This has been put on a statutory footing by section 55 (s.55) of the Borders, Citizenship and Immigration Act 2009 (UK Border Act) and also forms part of the Government's obligations under Article 8 of the European Convention on Human Rights (ECHR); the right to respect for private and family life. The s.55 duty applies to all children in the UK irrespective of immigration status and should be applied to children who are abroad but are affected by an immigration decision to refuse them or their parent leave to enter the UK.

### *The Immigration Rules*

The Government has stated that the financial requirements represent the correct balance between the public interest, on the one hand, and the right to respect for family life, on the other, as they ensure the financial viability of the family unit. However, applicants may be financially independent without meeting such rigid and high financial requirements. If the price is interference with children's rights that affect their emotional and mental well-being, sense of stability and security, and ultimately their happiness and development, then that does not meet the best interests principle and cannot be proportionate under Article 8 ECHR, particularly when, as this report shows, the stated public policy benefits are questionable. This report concludes that the financial requirements do not strike the right balance and breach Article 8 ECHR and the best interests principle.

### *The exception to the rules which safeguards the best interests of children*

Paragraph EX.1 is included in the rules to mitigate the negative impact upon children of the financial requirements and is said to safeguard the rights of children in the UK.. However, it is limited:

- It only applies to children in the UK who are citizens or who have lived in the UK continuously for seven years, so that non-citizen children under seven years old or who are older but have not always lived in the UK cannot qualify.
- It does not apply to parents who are in the UK on a visitor visa although applicants in the UK without any lawful immigration status can qualify. It also does not apply when the applicant is outside the UK. This creates a perverse incentive for visitors to overstay rather than return to their country of origin as required by the Rules. There

are many circumstances where a British citizen child's parent is in the UK on a visitor visa and needs to remain for the benefit of the child. There may also be compelling reasons why a child in the UK needs a parent to be admitted.

- EX.1 does not apply when applicants apply from abroad for entry clearance, as required by Immigration Rules, even though they have British citizen children in the UK.
- EX.1, whilst part of the Immigration Rules, is an exception so if applicants get leave under it they do not get the five year route to settlement which is granted under the Rules. Instead, they get limited leave over a ten year period. This doubles the length of time for settlement, prolongs uncertainty and increases the cost of the application process.

#### *Exceptional and compassionate circumstances outside the Rules*

These are to be considered by decision makers if an applicant does not meet the requirements of the Rules (including EX.1) in order to comply with Article 8 ECHR and the best interests principle. There are severe shortcomings with the guidance given to decision makers on factors to take into account, particularly when an applicant applies from outside the UK. Examples of exceptional circumstances are very limited and narrow:

- They are premised on the basis that it is not in the child's best interest to live with both parents if one parent is abroad
- Entry clearance officers are required to consider and rule out 'other means of meeting the child's best interests' than by the applicant's presence in the UK
- The vital significance of the parent-child bond is reduced to an 'effective and material contribution'.

The guidance plays a large part in how decision makers interpret the law and exacerbates the shortcomings with the Rules. It reduces the best interest principle to a mere exception and actively reminds decision makers that cases where an applicant can succeed under Article 8 ECHR are very rare.

#### *Review of decision-making and the best interests principle*

In 2013, John Vine, former Independent Chief Inspector of Borders and Immigration, reported that out of 60 refused partner applications cases involving children (mostly made under the old rules) in only one had a decision-maker considered their best interests. For this report, eleven refusal decisions under the financial requirements were analysed and these showed that nothing has changed since the Rules were amended:

- In eight out of eleven cases, the existence of the children was ignored
- In three cases, there was a formulaic consideration with little substantive analysis
- Decision letters failed to demonstrate that any consideration had taken place of 'the information and evidence provided concerning the children's best interests' as specifically required by guidance

- Where refusal was challenged by way of an appeal, in all except one case, the applicant won. When judges carried out an Article 8 assessment balancing the importance of family life and children’s best interests against public policy considerations, they held the Government’s interference in the child’s life was disproportionate.

In summary, this report has found that the Government’s legal obligations to children are not properly recognised, either within the financial requirements themselves or the exception to the financial requirements within the Rules. They have, in many cases, been reduced to an exception to be considered outside the Rules and this is done on a narrow basis with grants of leave under Article 8 being very rare. In addition, decision-making itself is flawed and does not take into account the best interests principle.

## **2.7 Conclusion and recommendations**

The UK now has among the least family-friendly family reunification policies out of 38 developed countries. The financial requirements are one of the major contributory factors to this. This report shows that the financial requirements introduced in 2012 have been responsible for the separation of thousands of British children from a parent. This may arise because the child lives in the UK with the British sponsor parent and the non-EEA parent cannot enter or remain in the UK due to the sponsor’s inability to meet the financial requirements of the Rules. In other cases, the child remains abroad with the non-EEA parent. Additionally, the whole family is sometimes stranded abroad even though the sponsor and child maybe British citizens and have a pressing need to return to the UK.

The report has identified several factors which make the financial requirements over-restrictive:

- The income threshold appears to be the highest in the world in relative terms and the second highest in absolute terms
- The threshold would not be met by almost half of adult British citizens, including many in full-time work, particularly the young, the retired, women, ethnic minorities and those living outside London and the South East
- The requirements are inflexible, do not take account of the overall financial position of families nor consider factors suggesting that they will be self-supporting after entry
- The evidence suggests that far from reducing reliance on public funds by migrant partners the requirements actually increase reliance on public funds by the sponsor parent, and their children’s social exclusion
- Decision makers do not apply the principle of the ‘best interests of the child as a primary consideration
- Applications are expensive and difficult to make.

Family life across borders raises concerns about effective immigration control but is an inevitable part of a modern, globalised world. It is not only an immigration question but

engages the fundamental rights of British citizens and settled migrants including significant numbers of British citizen children. It is particularly important that, where children are concerned, immigration restrictions are not more severe than they need to be.

The evidence collected for this report shows that the current financial requirements go beyond what is needed to ensure that incoming migrant partners do not become a burden on the public purse and are able to participate in British society. The Government does not appear to have explored different ways of addressing their concerns, including those used in other states, which are less intrusive. In so doing, children are being harmed in ways that are incompatible with the UK's obligations under the UNCRC. These obligations are reflected in s.55 of the Borders Act and the Human Rights Act 1998, which incorporates Article 8 of the ECHR and puts the 'best interests' principle onto a statutory footing in domestic law.

The report highlights that the best interests principle was not given adequate consideration in the formulation of the current rules, and that the principle is treated inadequately in guidance provided to decision makers or in the decision-making process. This has resulted in decisions being made that are harmful to children.

In summary, it is concluded that in order to meet their international and domestic obligations to children, the Government should consider changes in the following six areas:

- Changes to the financial requirements in the Immigration Rules
- Inclusion of a requirement to identify and consider the best interests of every child affected by entry or stay decisions as a primary consideration within the Immigration Rules (or amendment of para EX.1 to make it better reflect the Government's obligations)
- Amendment to forms and guidance to ensure decision makers properly consider children's best interests in the decision making process
- Reduction of the cost of applications and the application process
- Presumption that visitor visas will be granted to parents of children living in the UK
- Data collection and its publication.

"I just wanted to thank you for taking the time out to come and interview us. This may not be said enough but ... thank you for giving us a voice... For far too long this issue of separating parents from their children has gone unchecked and unvoiced ... I do hope the British people and the UK government will see the unfairness and the heartache this imposed separation is causing families and children."

**Father, 6 month old daughter**

### 3. Background to the current financial requirements

This report concerns the financial requirements in the Immigration Rules which must be met by British citizens and residents ('the sponsor') who wish to be joined in the UK by their non-EEA spouse or partner ('partner' is used in this report for spouse or partner unless the context requires otherwise). It shows that these requirements are so onerous that they have led to the long-term, sometimes indefinite, separation of a significant number of children from one of their parents.

This section of the report explains the current financial requirements, how they differ from the previous rules, and the background to their implementation including a discussion of whether this impact on children was foreseen. It also discusses how this impact emerged, the number of children who have been affected and the available data about their nationality and socio-economic background.

The current financial requirements were implemented in July 2012. The current rules and how they differ from the previous rules are discussed in more detail below. However, the main changes are summarised here:

Requirements	Before July 2012	After July 2012
Sponsor's income	Income must be sufficient to maintain family adequately (i.e. not below level of income support for that family) without reliance on welfare (except for that already received by the sponsor)	Sponsor must earn £18,600 pa plus £3,800 pa for first child sponsored and £2,400 pa for each additional child ('the income threshold').
Partner's prospective or actual earnings in UK	Taken into account provided there was evidence that, on the balance of probabilities, these would materialise.	Prospective earnings are never taken into account. Current earnings in UK may be counted if partner is working legally.
A commitment to support the family by parents or other family members	Taken into account provided there was evidence that, on the balance of probabilities, this would materialise.	Are never taken into account.
Savings	Could be included in overall assessment of whether adequate resources available to the family.	Savings can be used on their own or to make up shortfall in income. In all cases, this is subject to a £16,000 threshold and 2.5 multiplier.
Offer of free or low cost accommodation with	Provided it was adequate and not overcrowded, could	Is never taken into account; assumption that rent of £100

parents or other family members	be included in overall assessment of whether adequate resources available to the family.	per week will be paid is built into the income threshold.
Evidential requirements	Reliable evidence of meeting the conditions must be provided but this did not have to be in a prescribed form	Rigid and prescriptive evidential requirements
Time when conditions must be met	At time of application but assessment was of the future prospects of the family.	Income must have been available for at least 6 months and often longer, and savings must be held for at least six months before the application is made.

### 3.1 The current rules

The current financial requirements, which were implemented by rule changes in July 2012,<sup>3</sup> are contained in Appendix FM of the Immigration Rules and are supplemented by Appendix FM-SE which sets out how compliance is to be established.<sup>4</sup> Appendix FM deals with all the requirements for entry or leave to remain as the non-EEA family member of a British citizen or settled resident or, sometimes, a refugee.<sup>5</sup> The conditions are the same irrespective of whether the sponsor is a citizen or settled (i.e. has indefinite leave to remain) although the vast majority of those who act as sponsors (89% of those who responded to the survey) are British citizens. In respect of spouses and partners (which includes civil partners and unmarried couples who have lived together for at least two years), there are requirements as to suitability (i.e. good character), the relationship (i.e. that the relationship can be proven and is genuine), English language, as well as finances.

The financial requirements are found in paragraphs E-ECP.3.1 and E-ECP.3.2 of Appendix FM. The basic requirement is that sponsor must show a gross annual income (the 'income threshold') of at least £18,600 pa with an additional £3,800 pa for the first child and an additional £2,400 pa for each additional child who is sponsored (so not children who are British citizens, EEA nationals or settled in the UK). The applicant's income is only taken into account in limited circumstances and their prospective earnings are never taken into account.

<sup>3</sup> *Statement of Changes in Immigration Rules HC 194* available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/284574/hc194.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284574/hc194.pdf).

<sup>4</sup> *Statement of Changes in Immigration Rules HC 395* available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/370971/20141106\\_immigration\\_rules\\_appendix\\_fm\\_final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/370971/20141106_immigration_rules_appendix_fm_final.pdf) and <https://www.gov.uk/government/publications/immigration-rules-appendix-fm-se>.

<sup>5</sup> Refugees and those in receipt of humanitarian protection whose relationships arose before they left their country of origin do not have to meet the financial requirements. Those whose relationships arose later must meet them despite their significant disadvantage in the labour market (HC 395, paras 352A – 352AA).



There are limited ways in which the income threshold of at least £18,600 pa can be met:

How to meet the income threshold	Major conditions
Sponsor's employment in the UK	Sponsor must have been in the same job and earning the income threshold for six months. If there has been a change in employer, the sponsor must have met the total annual amount required during the previous year.
Sponsor's self-employment in UK	Sponsor must show that they earned the income threshold in the last full financial year or as an average of the last two full financial years.
Sponsor's employment or self-employment outside UK (when sponsor is returning to the UK with their partner).	Must meet income threshold as if in UK even if sponsor has been living in low income country; sponsor must also have a job offer (or established self-employment) in the UK that meets the income threshold.
Partner's earnings in the UK	Only if working or self-employed legally in the UK; prospective earnings do not count.
Savings	Savings above £16,000 will be treated as income subject to a 2.5 multiplier e.g. to make up a £1,000 deficit in income, £16,000 plus £2,500 i.e. £18,500 is needed. Cannot be used to supplement income from self-employment.
Pension of either sponsor or partner paid in UK or from abroad	The full amount needed must have been received in the past twelve months.
Other forms of income including maternity allowance, bereavement benefit, payment relating to service in HM Forces, maintenance payments, rental income.	Full amount must have been received alone or as part of income stream that meets the income threshold during the previous twelve months.

"I even told my wife I'll see you back in England in a couple of months. And I opened up this pdf file on the Government's website ... Basically, if you don't have six month's payslips, you won't get any visa. I thought you must be joking, you can't tell me that my wife can't come to England for 6 months. We have got children. They said yeah, but that's the rules, too bad ... And then in November my wife phoned me and said she was pregnant. So clearly I am in England, she is in Japan, she has just told me she is pregnant and the immigration told me we are not going to be able to apply for a visa for six months."

**Father, 2 children aged 3 years and 4 weeks**

The problems associated with the financial requirements are discussed later in the report (section 5) but major sources of difficulty in meeting the rules have arisen because:

- The income threshold is very high and cannot be met by a large section of the population
- Income must be earned for a considerable period (six months, a year or even longer in some cases e.g. self-employment) before the application can be made
- Income must be earned only by the sponsor unless the migrant partner is already in the UK and is working legally
- If the family has been living overseas, the income must have been earned in the country of origin (with no discount for relatively lower wages) and the sponsor must also have an established business or a suitable job offer in the UK. This has proven impossible in many cases
- Support by third parties, such as parents or other family members, is not taken into account.

There is an exemption from the income requirement where the sponsor is in receipt of specified disability benefits or carer's allowance, in which case the requirement is that the applicant must provide evidence that the sponsor is able to maintain and accommodate the family unit adequately without recourse to public funds (other than those they already receive), the same position as under the former rules.

### **3.2 The former rules**

The rules in place before July 2012 required only that the parties could maintain themselves and any dependants adequately without recourse to public funds (other than those the sponsor was already receiving).

Adequate maintenance was defined in the Immigration Rules as meaning that, after deduction of income tax and housing costs, the level of income was at least equal to that available to the family had they been in receipt of income support.<sup>6</sup> This reflected the interpretation of 'adequate' in a decision of the Asylum and Immigration Tribunal in 2006.<sup>7</sup> Public funds that were already received by the sponsor before entry could contribute to the total. Thus in-work benefits such as working tax credit, housing or council tax benefit could count towards the total income.<sup>8</sup> However, the partner would not be admitted if the consequence would have been an increased reliance on public funds.

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<sup>6</sup> HC 395, para. 6.

<sup>7</sup> *KA and Others (Adequacy of maintenance) Pakistan* [2006] UKAIT 00065.

<sup>8</sup> Under the former rules, a non-working sponsor would not usually receive enough public funds to support the family unit, including the applicant, at the level of income support but that was sometimes the case for those receiving disability benefits, whose position is preserved under the new rules.

“[Foreign spouses] don’t want benefits, they just want to work and earn a living and contribute to society and have a nice peaceful life together... [My grandson] is such a lovely little boy to lose his dad. Under these circumstances it’s an outrage.”

**Grandmother, grandson aged 4 years**

In addition, the prospective earnings of the incoming partner could be taken into account provided there was satisfactory evidence, on the balance of probabilities, that these would materialise. Support from third parties (such as parents or other relatives) could be taken into account, again subject to satisfactory evidence.<sup>9</sup>

### **3.3 Why did the Rules change?**

The background to the financial requirements was a commitment to reducing net migration to the ‘tens of thousands’.<sup>10</sup> Family migration was included in this target.<sup>11</sup> The main concerns in respect of family migration were to reduce abuse, to reduce or eliminate welfare claims by incoming partners once they have indefinite leave to remain (which now only happens after five years residence) and the need for them to have sufficient funds to ‘participate in everyday life ... as a basis for integration’.<sup>12</sup> It seems that the financial requirements were designed to meet the latter two aims.

“That is what made me really angry about it was that the rules were almost deliberately designed to keep people out. I am an entrepreneur, I help British businesses. I am a strong believer in the direction the country is taking, I support the administration and to think that actually they are trying to keep people like me out. I understand the thinking behind limiting immigration. I understand the thinking behind asking for financial means. But having actually dealt with the whole immigration system, there is a truly rotten core. There is a dark heart at the middle of it.”

**British Father, son and daughter aged 9 and 7 years**

### **3.4 The effect of the new financial requirements on children**

When the financial requirements were first implemented, the Migration Observatory at Oxford University calculated that 47% of British citizens in employment would not qualify to bring in a family member.<sup>13</sup> The current minimum wage of £6.50 per hour paid for 40 hours a week, 52 weeks of the year, results in an annual income of £13,250, well below the income threshold. Many people on casual contracts will find it impossible to earn that much even if they wish to work full-time. The income threshold is also above the full-time living

<sup>9</sup> This was not explicitly provided in the previous version of the rules but was found to be permitted by the Supreme Court in *Mahad v ECO* [2009] UKSC 16.

<sup>10</sup> For example, Damian Green *Hansard* HC, 12 December 2011 : Column 513.

<sup>11</sup> *The Home Secretary’s Immigration Speech*, speech by Theresa May 5<sup>th</sup> November 2010.

<sup>12</sup> *The Home Secretary’s Immigration Speech*, speech by Theresa May 5<sup>th</sup> November 2010, Policy Exchange; see also *Damian Green Speech on Family Migration*, 15<sup>th</sup> September 2011 Centre for Policy Studies; Home Office/UK Border Agency *Family Migration: A Consultation* July 2011, p. 3; Home Office *Impact Assessment on Changes to Family Migration Rules*, IA no: HO0065 12<sup>th</sup> June 2012.

<sup>13</sup> Migration Observatory, *Women, Young People and Non-Londoners Are Most Affected by Changes to Family Migration Policy*, Oxford University 12 June 2012.

wage except in London. In addition, some groups are affected more than others, notably women, the young, those living in regions of the UK, retired people, and those from some ethnic groups.

“I mean this £18600, this number, they did not take different areas really into consideration ... if you’re down South it’s easier to earn that amount of money but certainly in [the north of England], in these areas this is not so easy.”

**Mother living in North-East England, son aged 4 years**

“I had been working for the Royal Mail and I had been working hard 18 hours a day, more than 70 hours a week. Even I, after all my effort to attain this threshold, I failed. We’ve got a saying in Arabic, I will translate it. ‘If you want to be obeyed, ask what can be fulfilled’... Maybe it doesn’t give the exact sense of the meaning, but if you want for somebody to obey you, ask me for something that I can do. But you can’t ask me for something that I am unable to achieve.”

**Father, two daughters aged 9 years and 9 months**

Soon after implementation, reports began to emerge of difficulties for British sponsors and their families (see Appendix B for more details of the information in this section). They included a report by the All Party Parliamentary Group on Migration (APPG). These reports were consistent in finding that the financial requirements were causing problems and in identifying the following factors:

- In many regions of the UK, a salary of £18,600 pa is out of reach for much of the population and sponsors cannot see a way to achieve it in the foreseeable future
- The requirements discriminate by gender, age and ethnicity
- To meet the financial requirements, some individuals are working excessive hours, up to 70 hours per week
- Those working in certain employment sectors, such as healthcare, manual and service industries, those studying for professional qualifications and those working in the voluntary sector are often unable to meet the income threshold
- The financial requirements are inflexible and do not allow for cases where families cannot meet the income threshold, but are self-sufficient. Notably, support from other family members and the incoming partner’s income are excluded, and the requirements to show self-employment and on families returning from abroad are unduly stringent
- Rather than promoting economic independence, a failure to satisfy the financial requirements has resulted in increased welfare dependency among some families, particularly amongst families with children.

Of concern to the Children’s Commissioner for England were reports that children had been adversely affected. This was happening in a number of ways:

- Family separation was occurring when one parent could not be admitted to or was required to leave the UK
- Families returning from abroad could not enter the UK together and were forced to split up; sometimes children were separated from both a parent and a sibling
- There were instances of the separation of babies and very young children; some UK sponsors reported that their non-EEA partner had not met their child
- Some mothers were without their partner before, during and after the birth of their child
- Children were separated from wider family networks and support
- Although they are British citizens, children were unable to enter the British education system and to grow up culturally and socially integrated into the UK
- Some parents were working excessive hours in an attempt to meet the income threshold, resulting in long hours spent with carers and fatigue by the parent
- Because the other parent could not enter the UK, families had to rely on one income in the UK while extra costs for childcare, visits etc. were incurred
- Many parents were suffering from stress, anxiety and sometimes depression as a result of the separation and attempts to meet the financial requirements and this was affecting their relationship with their child
- Many children were showing symptoms of distress.

“We do Skype on the weekend but I almost have to force him and encourage him to Skype his dad. He won’t talk to him on the phone. I asked him why not and his answer is ‘it’s not good enough, then I have to say goodbye and it’s not the same, I can’t even give him a proper cuddle goodbye.’ I try and keep the communication between them but he says he would rather not talk to his father than have to go through saying goodbye.”

**Mother, son aged 12 years**

### **3.5 Was the impact on children anticipated?**

“I have never, ever known my son to be so distraught as leaving his mother that night in Beijing.”

**Father, son aged 9 years**

The effects of the financial requirements on children were not discussed by politicians in the period leading up to the Family Migration Consultation, which was published in July 2011.<sup>14</sup> This was a wide-ranging document which contained proposals for many other measures as well as the financial requirements. In discussing the impact on families, it seemed to

<sup>14</sup> Family Migration Consultation n.12 above.

envisage that families who did not meet the requirements would relocate abroad. As a result, the possibility that children might be separated from their parents was not foreseen.<sup>15</sup> In general, while there was the occasional reference to the best interests of children,<sup>16</sup> there was no specific consideration of how these policies would affect children or how children's interests would be taken into account.

"I always wondered MPs that make these rules, they go home and they kiss their kids goodnight and they can read them stories ... how [would they] feel if somebody would stop them from doing that for the sake of piece of paper. That's what it really is, a piece of paper".

**Mother, three children aged 11 years, 9 years and 6 months**

The response to the consultation, which was published in June 2011, announced that the Government's intention was to introduce a minimum income threshold of £18,600 pa.<sup>17</sup> While a majority of respondents had favoured a minimum income threshold, the consultation had not asked what the level should be. This figure was taken from the Migration Advisory Committee (MAC) report on the minimum income requirement which appeared in November 2011.<sup>18</sup> The MAC report is discussed in Section 5; for present purposes, it should be noted that the MAC made it clear that their report was based purely on economic considerations and did not consider the broader implications, including for children.<sup>19</sup> The MAC acknowledged that 45% of applicants would be unable to meet this threshold, a finding that is consistent with the Migration Observatory findings for the population as a whole.<sup>20</sup>

"My daughter is getting to know me via Skype. I don't want her to know me via Skype, I just want to know my daughter better. I mean she was crying yesterday and I couldn't pick her up and it just broke my heart... It's not her fault and technically it's not mine either, it's just the circumstances of being in the wrong place at the wrong time ... But sometimes I feel you are guilty of circumstances."

**Father, daughter aged 6 months**

In June 2012, the new rules were published alongside the Government's Statement of Intent<sup>21</sup> which said that the rules 'will reflect the UK Border Agency's duty under section 55 of the Borders, Citizenship and Immigration Act 2009 to have regard to the need to safeguard and promote the welfare – or "best interests" – of children who are in the UK'.<sup>22</sup> However, there was no elaboration of how these would be taken into account and the discussion of the income requirement did not contain any reference to the best interests of children. Nor was the effect on children anticipated in the Impact Assessment. Although the

<sup>15</sup> *Ibid*, pp.7,14.

<sup>16</sup> For example, *ibid*, p.63.

<sup>17</sup> Home Office/UK Border Agency *Response to the Family Migration Consultation* October 2012 p. 28.

<sup>18</sup> Migration Advisory Committee *Review of the Minimum Income Requirement for Sponsorship under the Family Migration Route* November 2011.

<sup>19</sup> *Ibid* p.7

<sup>20</sup> *Ibid* p.75.

<sup>21</sup> Home Office *Statement of Intent : Family Migration* June 2012.

<sup>22</sup> *Ibid* p.4.

Impact Assessment does refer to a reduction in the number of visa applications, the vast majority of children who are affected are British citizens and do not require leave to enter or remain in the UK and their position was not discussed.

The new rules came into effect in July 2012. The Immigration Rules are not usually debated in Parliament but, on this occasion, the Government instigated a debate on the Article 8 provisions of the new rules in order to emphasise that they had the support of Parliament. The financial requirements were only briefly discussed and, where they were mentioned, it was assumed that they would not result in separation of parents and children.<sup>23</sup> With a few exceptions, MPs seemed not to anticipate the likely impact of the financial requirements on families with children.<sup>24</sup>

“... My oldest son said, 'how dare they put a price on love? That's discrimination', and I said it's true. It is true, how can you tell somebody how much money you need in your account before you can legitimately say yes, that's your spouse? It's not fair. And for an eleven year old to say that, why can't the Government see that?”

**Mother, three children aged 11 years, 10 years and 6 months**

### **3.6 Why was the impact on children not anticipated?**

Given the contents of this report, it may seem surprising that the impact on children was not more widely anticipated. One reason may be that most of the children affected by the financial requirements are British citizens (79.2% of children in the survey responses). Others may be settled in the UK. A child born in the UK to a British citizen or settled resident is a British citizen by birth. A child born abroad to a British citizen parent will almost always be a British citizen.<sup>25</sup> These children are not counted in the immigration statistics because they are not migrants.

However, that does not explain why the disruption to their family lives was not predicted as a consequence of new immigration policies. In the Family Migration Consultation and the Statement of Intent, children's interests are mentioned in a general way but there is no close examination of the likely effect on them.<sup>26</sup> The implication throughout is that those families who no longer meet the Rules will live abroad so the question of family splitting did not arise.

“It's sad to watch my son grow up without a father when it's preventable like it's not a breakdown of a relationship, it's not anything, it's British law that is stopping British families ... being together.”

**Mother, son aged 9 months**

<sup>23</sup> HC Deb, 19 June 2012, c769.

<sup>24</sup> But see, for example, Pete Wishart MP HC Deb, 19 June 2012, c793.

<sup>25</sup> A child born outside the UK to a parent who is also a citizen by descent (i.e. born outside the UK) will not be born a British citizen but may be registered as a British citizen if the connection with the UK is maintained through residence for three years by the parent before birth or by the whole family after birth (British Nationality Act 1981, ss. 3(3), 3(5)).

<sup>26</sup> *Family Migration Consultation*, n.12 above, pp.63, 64; *Statement of Intent* n.21 above, pp.4, 12.

“We had a hellish five months where the family was forcibly separated. It’s too upsetting to recall and go through in detail here again now, but it was heart-breaking for all of us, especially the children ... We pulled through together in the end, but there were times when my son and I were climbing the walls, both incredibly frustrated with the situation. I don’t even want to think about it now.”

**Father, son and daughter aged 9 years and 7 years**

However, in practice, relocation is not always possible. To begin with, it requires the other state to accept the British partner and children when the UK is not prepared to do so. In any event, it appears that a substantial number of bi-national families see their future in the UK. The vast majority of these families contain a British citizen parent and British children. It is not surprising that British citizens expect to live in their own state with their families in the absence of serious adverse factors. Many respondents to the survey therefore are living in the UK and attempting to maintain their family life at long distance, while looking for ways to meet the financial requirements. Others are living in what they consider to be exile abroad, often in sub-optimum conditions. In all cases, children are adversely affected in ways that were not anticipated when the financial requirements were formulated. More information about this can be found in the next section.

### **3.7 Who has been affected?**

“We first met in 2012 in the summer. I was travelling in Tanzania, a year abroad as part of my degree.”

**Mother, son aged 9 months**

One effect of globalisation has been to increase the opportunities for British citizens of all backgrounds to meet partners from countries outside the EU. In the past, spousal migration was associated mainly with ethnic groups originating from the UK’s former colonies, particularly the Indian sub-continent. However, as discussed in Appendix F, partner migration is now extremely diverse. Table 4 and Figure 4 in Appendix F show that, after implementation of the financial requirements, numbers of successful applications declined in all regions of the world. This reflects the diverse nationalities of partners reported in the survey where the ten nationalities most affected were: US, Morocco, Egypt, India, Turkey, China, South Africa, Thailand, Japan, and Pakistan (Appendix A, Table 14).

Because of the context in which these relationships develop, they may already be well-established and children have been born before the question of admission to the UK arises. In other cases, children were born before the Rules changed. A significant number of the survey respondents were bi-national families who had been living abroad in countries such as Australia, Canada, China, Japan, Thailand and the United States, and now wished to live in the UK, only to find that they could not do so or only with great difficulty and after prolonged separation. In other cases, the foreign partner came to the UK for study, travel or work, and the relationship developed in the UK. Sometimes, the application to enter as a partner only arose some time later after the migrant had returned to the country of origin (as is usually required by the Immigration Rules).



“My wife is Japanese and we met in India. I was backpacking and I met her in a restaurant. We backpacked together for a little bit and I came back and she came to visit me. And then she came to visit me several times... I moved to Japan a year later. And two years later we both went back to India and I proposed to her.”

**Father, 2 children aged 3 years and 2 months**

British citizens may also form relationships with those they met on holiday or during gap years, internships, study abroad schemes or similar. Global travel is now a normal part of life for many people including those of modest means, who may nevertheless be well educated (66% of the sample had degrees or equivalent qualifications). They do not understand why they cannot exercise what seems to them to be a straightforward right: to establish their family life in their own home country.

“We met in Morocco...I went on holiday he was working at a hotel where we stayed. We spoke a few times and then just before I left he asked me for my mobile number and he texted me. And then we swapped email addresses and we emailed each other and then I gave him my home phone number and he phoned a few times. And then about seven months later I went over for a holiday for two weeks and then we got to know each other better from there. We spent two weeks together and I met his family and it just progressed from there... He asked me to get engaged about eight months after that and we did.”

**Mother, son aged 15 years**

Leaving aside their expectations as citizens and residents, often there are compelling reasons for wanting to live in the UK. Families in the survey who had lived abroad now wished to return for a variety of reasons including: to give children a British education; to be near wider family (particularly elderly parents); to find new work or advance their careers; or for a more settled life. In some cases, it was the prospective birth of a child which triggered return. On other occasions, the move was driven by the health needs of a family member which could not be adequately met in developing countries (see section 4).

“I think having a child ... since he was born it is really just three of us here and we are doing it alone and it is hard with no immediate family support to call on. So it is quite tough and it brought more to the forefront of my mind that really we are on our own and since I gave up work to stay at home to look after him... I feel like a fish out of water here.”

**Mother, son aged 19 months**

“Then when my son was three years old we realised he had a respiratory problem and the pollution was getting worse and worse. By the spring of 2012, we realised we couldn't stay there. I remember spending a whole week listening to him coughing the whole night, and if you looked out the window, you couldn't see anything but just this smoke. And in the end the decision to move was fairly rapid because he was in a bad way.”

**Father, son aged 9 years**

The respondents to the survey who had not lived abroad as a family were often unable to join their partner in the country of origin. It cannot be assumed that the couple's children, if they were born in the UK, are citizens of the other parent's state and it is possible that

neither the UK parent nor the children would qualify for entry. To expect families to relocate out of the UK presumes greater hospitality from the other state than the UK is willing to grant.

“What if my country then decides she can’t come in, do we meet in the ocean?”

**Father, daughter aged 6 months**

Some sponsors had children by a previous relationship and the other parent would not consent to them moving abroad or moving was unfeasible for educational or social reasons even if the other state would allow this (the UK rarely allows non-national step-children to enter).<sup>27</sup> Other sponsors had caring responsibilities, for example, to their own parents, or health conditions which prevented them from moving. Several owned their own homes and wished to remain in them with their partner. Some respondents were in the middle of professional training or had careers which they were developing.

“We are also caring for my father who is 90 years old. If we went, who would look after him? He would be put into a care home because he can’t look after himself.”

**Father, daughter aged 2 years**

“I hated it, it was hard and then I got two older kids, so it’s like I can’t pick up and leave because my other kids need their dad, I can’t keep it like this because she misses her dad. It was tough, between a hard place and a rock.”

**Mother, three children aged 11 years, 9 years and 6 months**

“My parents are getting older but I can’t be there to support them unless I leave my husband. How am I supposed to choose between my parents and my husband? My son can’t even live in his own country.”

**Mother, son aged 18 months**

In some cases, the non-UK partner came from unstable or low income regions, including places where the British governments advises against all travel (Syria), non-essential travel (Iran) or advises against travel to some areas of the country (Egypt, Pakistan, Algeria). In some countries, such as Egypt, there are difficulties or restrictions on the UK partner’s ability to work or live freely. Even if relocation is possible, the UK is a comparatively safe, wealthy and democratic country, it is normal for a bi-national couple to wish to live where opportunities are better and the survey respondents could not understand why this was so difficult for them.

“In [country of partner] I think there is a lot of pressure for me to convert but it’s not going to happen. But I think it would be difficult if I was there. The British culture is more accepting of raising a child in two different religions or cultures.”

**Mother, son aged 9 months**

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<sup>27</sup> The UK Immigration Rules do not permit the entry of non-national step-children unless the incoming parent has sole responsibility for those children or there are serious and compelling family or other considerations which make exclusion of the child undesirable (HC 395, Appendix FM, para. E-ECC.1.6).

Those affected come from a wide range of educational, social and ethnic backgrounds. The demographic information from the survey carried out for this report is summarised in Appendix A. As the immigration statistics do not show any information about sponsors, this is the most reliable up-to-date data available about parents who have been affected by the financial requirements. As only parents were surveyed, it is likely that the demographic profile differs from that of all sponsors who have been affected by the Rules.

This shows that 89 of the 100 respondents (89%) are British citizens, ten are settled in the UK (indefinite leave to remain) and one is a refugee. Out of 93 respondents who answered this question 72 (77%) were born in the UK. 58 (58%) are women and 42 (42%) are men. They are, as might be expected, young. 43 respondents (43%) are aged under 35 and 79 (79%) are aged under 45. Only one respondent is over 65. 66 respondents out of 97 who answered (68%) were educated to at least university level. 65 respondents out of 94 (69%) are in employment, a high proportion considering that they are all parents and the majority are looking after their children without the presence of their partner.

Of the 83 respondents who gave us information about their income, 21 respondents (25%) earn over £18,600 but face other problems in complying with the financial requirements, 20 (24%) earn over £13,400 (the current minimum wage) but less than £18,600 and 35 (42%) earn less than £13,400. Whilst a high percentage earn under £13,400, this category encompasses a diversity of situations, such as women with childcare responsibilities who are unable to work and those in low paid jobs, for example as cleaners, nursery assistants, learning support workers, driving instructors, labourers or shop workers. It also includes British citizens who have recently returned to the UK and are re-entering the labour market. Those who have been working abroad are often unable to convert their salaries into a sufficiently high British equivalent even if they enjoy a reasonable standard of living in the other country. Sometimes, the British sponsor is looking after children or not working for other reasons and, even though the family income is high, he or she will be unable to meet the financial requirements.

With some exceptions, the picture that emerges is of a young, well-educated group whose earnings are nonetheless relatively low. As discussed later, many of those with low incomes are trapped by their childcare responsibilities which the admission of their partner would relieve. Others have partners who are employable and who would be able to support the family either alone or together with the sponsor (see 5.2 below). Some of those on very low earnings would have been refused under the rules that were in place until July 2012.

“I have had to stay living at home with my parents and am crippled by high childcare costs. As a student I had some help with childcare but since graduating and trying to find work (which I haven’t yet) I’ve had to continue paying the childcare to ensure I can keep his place. If my husband was with me and working none of that would be an issue.”  
**Mother, son aged 15 months**

### **3.8 How many children are affected by the financial requirements?**

It has not been possible to obtain reliable information about how many children have been affected by the financial requirements. Because the vast majority of children affected are

British citizens or settled in the UK, they are not included in the immigration statistics. However, the number and nationality of applicants' children are recorded on visa and leave to remain application forms, so the information is in the possession of UK Visas and Immigration. It is not routinely extracted although it is possible that it may be in future:

*Data are not currently available on the number of British citizen children who may be affected by the decision on a settlement visa or leave to remain application from their non-EEA national parent or from the non-EEA national partner of their British citizen parent. Work continues on the scope for more data to be transferred to our IT systems from the application process, including from visa4UK, and this category will be considered as part of that work.*<sup>28</sup>

In the absence of this data, the authors of the report have estimated the number of children affected using the data that is available. The way in which this was done is set out in Appendix C. While it is an informed estimate, it suggests that at least 15,000 children have been affected by the refusal of their parents due to the financial requirements in the three years since it was implemented. This number is likely to continue to increase while the policy remains unchanged.

### **3.9 Conclusion**

Section 3 of the report has explained the nature of the financial requirements, how they are different to the former rules, the background to their implementation and the ways in which implementation was found to affect children. It went on to show that this impact was not predicted in the Government consultation, impact assessment or statement of intent. None of these documents contained any detailed consideration of how the financial requirements would affect children.

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<sup>28</sup> Email from Clive Peckover, Head of Family Policy, Immigration & Border Policy Directorate, Home Office to the Children's Commissioner's office 29<sup>th</sup> June 2015.

## 4. Effects of the financial requirements on children and their families

This section draws on the 100 survey responses submitted to the Children’s Commissioner’s office, as well as 20 interviews undertaken with 11 children between the ages of three and 12 years old and 28 parents. The survey questionnaire asked about contact between the child and the absent parent, the impact of separation on childcare and living costs, and support received from friends and family members. In addition, parents were asked to describe the perceived impact on their child’s development, health and wellbeing, behaviour, and relationships with other family members. Semi-structured interviews explored these themes in greater depth, asking participants to elaborate more fully on themes which had emerged from the questionnaires.<sup>29</sup>

The survey and interviews with families reveal the detrimental effects on children caused by a family’s inability to meet the requirements of the Immigration Rules (the ‘Rules’). These stem from the enforced separation of children from a parent and other family members, as well as the communication of parental stress and anxiety on to children. As the literature on child psychology demonstrates, separation and parental stress often undermine the developmental, emotional, and behavioural well-being of children in addition to causing disruption to relationships.<sup>30</sup>

The data obtained demonstrates that the impact on each family is particular to their individual circumstances. Reported impacts on children varied, for example, depending on the age of the child, length of separation, and availability of family support. However, various themes emerged which demonstrate a devastating effect on families. The academic literature suggests that these effects may have an impact on their long-term well-being.

### 4.1 *Reported effects on children*

Almost all parents reported that their children were suffering as a result of difficulties caused by their inability to meet the financial requirements of the Rules. The main impacts on children emerged due to separation from a parent, as well as children internalising and reacting to their parents’ anxiety and stress. Parents also reported that they found it more difficult to mediate and resolve their child’s emotional and developmental needs due to separation from a partner. This was compounded by attempts to navigate the visa or appeal process, in addition to working long hours in order to satisfy the income requirement. These factors all contributed to mental health issues among parents.

The academic literature on child attachment theory demonstrates that children benefit from stable relationships with parents and caregivers and that separation from either parent can be harmful. Effects may include emotional withdrawal from or aggression towards the absent parent, relationship difficulties and low self-esteem. Physical health may also be affected. Children’s ability to manage change in their relationships is also influenced by the feelings and attitudes of other family members and by uncertainty as to how long separation may last. Furthermore, security of early attachments has been shown to be particularly vital for young children’s long-term well-being. The longer the period of

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<sup>29</sup> More information on methodology can be found in Appendix A.

<sup>30</sup> The literature is reviewed in more detail in Appendix D.

separation and the older the child, the more difficult it is to re-establish a parental relationship after separation. Some negative effects (for example, low self-esteem and behavioural difficulties) may never be reversed.

Anxiety, stress and deteriorating mental health among parents also has a direct impact on children. High levels of parental stress have been linked to separation anxiety, attention deficits and depression in children.<sup>31</sup> One reason for this is that stress impacts on the developing brain.<sup>32</sup> Extended periods of stress may also undermine a child's physical development.<sup>3334</sup> As the body is going through such rapid developmental changes, children are particularly vulnerable to the effects of stress.

This section shows that children have been adversely affected in a number of ways by the financial requirements. In the majority of cases, children had been separated from a parent or step-parent. In other cases, families were living in exile abroad, with British children denied the right to live in their country of nationality. Other additional adverse factors were:

- Some parents experience stress and anxiety, acute financial pressures, longer working hours or other life style changes, all of which affect their children
- In many cases, one parent is absent from the birth and early weeks or months of their child's life, increasing maternal stress and reducing opportunities for early bonding
- Children's relationships with wider family are adversely affected
- Sometimes families become separated permanently with the other parent living indefinitely abroad.

The reported emotional and behavioural effects are:

- Children often become clingy and dependent on one parent, suffering from separation anxiety well beyond the age at which this is expected
- Some Children become angry and disobedient
- Some Younger children throw more tantrums, particularly when they cannot be with or speak to the other parent
- Older children can become more aggressive, including towards their peers and at school
- Some Children's sleep is disrupted and they have night terrors or wet the bed

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<sup>31</sup> Huang, C. Y., Costeines, J., Kaufman, J. S. & Ayala, C. (2014). Parenting stress, social support, and depression for ethnic minority adolescent mothers: Impact on child development. *Journal of Child and Family Studies*, 23, 225-262.

<sup>32</sup> Lupien, S. J., McEwan, B. J., Gunnar, M. R. & Heim, C. (2009). Effects of stress throughout the lifespan on the brain, behaviour and cognition. *Nature Reviews Neuroscience*, 10, 434-445.

<sup>33</sup> Blair, C. & Raver, C. (2012). Child development in the context of adversity: Experiential capitalisation of brain and behaviour. *American Psychologist*, 67, 309-318.

<sup>34</sup> Thompson, R. A. & Haskins, R. (2014) Early stress gets under the skin: Promising initiatives to help children facing chronic adversity. *Future of Children*, 24, 1-6.

- Some children’s eating patterns change, with under-eating, increased fussiness or comfort-eating reported
- Some children’s peer relationships are adversely affected and they can become socially isolated and withdrawn
- Children can disengage from the absent parent, refusing to talk to them and rejecting them when they are present
- Children often feel guilty or think they are to blame for the parent’s absence.

Many of the behavioural problems described correspond with symptoms of anxiety, which can manifest itself in a number of ways in children and young people. The NHS<sup>35</sup> lists the following signs that a child may be suffering from anxiety:

- Difficulty in concentrating
- Not sleeping, or waking in the night with bad dreams
- Not eating properly
- Quickly getting angry or irritable, and being out of control during outbursts
- Constantly worrying or having negative thoughts
- Feeling tense and fidgety, or using the toilet often
- Always crying
- Being clingy all the time (when other children are ok).

“He struggles, completely, he really struggles, it’s horrible. He has got anxiety... he gets knots in his tummy and he worries, yeah. We had him at the doctor a few times about stomach ache and the doctor said it was anxiety. Just not knowing, no stability, not knowing what’s happening... And seeing a child crying all the time because they are anxious, that’s horrendous. He is seven, he should never feel that way, he should be a child, and they are taking that away.”

**Mother, son aged 7 years**

<sup>35</sup> NHS Choices. Anxiety disorders in children. December 2014. <http://www.nhs.uk/conditions/anxiety-children/Pages/Introduction.aspx#signs>

While it is normal for children and young people to feel anxious at times, especially in response to stressful situations, this can develop into a much more serious problem if it continues long term and is left untreated:

*Long-term anxiety can severely interfere with a child's personal development, family life and schooling. Anxiety disorders that start in childhood often persist into the teenage years and early adulthood. Teenagers with an anxiety disorder are more likely to develop clinical depression, misuse drugs and feel suicidal.<sup>36</sup>*

#### 4.1.1 Children suffer from separation anxiety

The most frequent issue described in relation to children under the age of 12 was over-dependence on the remaining parent, often to the point of distress when the parent left the room. While separation anxiety is common among young children, it can be a sign of undue stress and anxiety if experienced beyond the age three.<sup>37</sup> High levels of parental stress have also been linked to separation anxiety in children.<sup>38</sup>

“My younger daughter has become pathologically dependent on being near her mother and will refuse to spend time away from her mother, for example with her grandparents.”  
**Father, two daughters aged 14 years and 10 years**

“Both of our children have extreme separation anxiety when my wife even steps out of the house to run errands. I believe this is due to the fact they are aware of their daddy’s absence. When I go over there for visits, they will not even sleep for the first few nights, afraid of waking up to find me gone. This is especially hard for our five year old who would not let go of me and wants to follow me around, even to the toilet. Our five year old gets hysterical over mundane things due to separation anxiety.”  
**Father, son and daughter aged 2 years and 5 years**

“Every time I say goodnight to my son, who is now over a year old, he bursts into uncontrollable tears because he thinks he won't see me for weeks. You have no idea how that feels.”  
**Father, son aged 1 year**

“[My partner] said she is very clingy. He says to me that he can’t walk out of the room as then she gets all panicky... I left the room one day and didn’t come back and so is she thinking, is he going to do the same? But he thinks she is very, very clingy all the time now. He can’t go anywhere without her.”  
**Father, daughter aged 1 year**

<sup>36</sup> *Ibid.*

<sup>37</sup> Mental Health Foundation. *Children and Young People* (2015) <http://www.mentalhealth.org.uk/help-information/mental-health-a-z/C/children-young-people/>

<sup>38</sup> Huang, C., Costeines, J., Kaufman, J. & Ayala, C. (2014). Parenting stress, social support, and depression for ethnic minority adolescent mothers: Impact on child development. *Journal of Child and Family Studies*, 23, 255-262.



“My son has emotionally been affected. He suffers from separation anxiety and does not even like being left at nursery or anywhere he cannot see me. If I leave he thinks I’ve gone ‘on airplane like daddy’.”

**Mother, son aged 3 years**

“After two years, it still makes [my son] every day worry maybe one day I won’t be there. He asks me, ‘when I am back from school can I see you?’ Yeah he is very happy now, but still sometimes he tells me, ‘I don’t want to leave you, I worry if one day you die’... Maybe some people think it’s a silly question, stupid question but I know why he asks the question, because I know he remembers when I wasn’t there.”

**Mother, son aged 9 years**

These traits can be seen to correspond to Ainsworth’s “insecure resistant attachment”<sup>39</sup> model, which can be caused by disruption to early affectional bonds such as separation from a caregiver.<sup>40</sup> Clinging to a parent or caregiver, crying loudly when they leave and pushing the parent away when they return after an absence are all indicative of ‘Insecure Resistant Attachment’, behaviour which would not normally be present in a child who appears “securely attached”.<sup>41</sup> As the literature on child attachment indicates, secure attachment is particularly vital in the first year of a child’s life and provides an important foundation for psychological development. This can in turn impact a child’s emotional wellbeing, social competence, self-esteem, and relationships as they grow older.<sup>42</sup>

#### 4.1.2 Children show anger, disobedience and negative behaviour

Many parents mentioned that their children had started to exhibit negative behaviour, such as not listening and doing things they knew were ‘naughty’, which began after they had been separated from a parent. Parents also described the frustration and stress of trying to cope with their child’s behaviour, as well as feeling that their child blamed them for the separation. This made it more difficult for parents to cope, a contributor to further behavioural and developmental issues in children.

“He is a very sweet boy but after he has an emotional breakdown about missing daddy and wanting daddy at home he often does things he knows are naughty and keeps doing them even when told not to.”

**Mother, son aged two years**

“Ever since he has gone she has been really bad, she just screams all the time, she just wants to pinch constantly.”

**Mother, daughter aged 18 months**

<sup>39</sup> Ainsworth, M. S. (1979). Infant–mother attachment. *American Psychologist*, 34(10), 932.

<sup>40</sup> Bowlby, J. (1969). *Attachment and Loss, Volume I: Attachment*. London: Hogarth. p. 3.

<sup>41</sup> Sroufe, L. A., Egeland, B., Carlson, E., & Collins, W. A. (2005). Placing early attachment experiences in developmental context. In K. E. Grossmann, K. Grossmann, & E. Waters (Eds.), *Attachment from infancy to adulthood: The major longitudinal studies* 48-70. New York: Guilford Publications.

<sup>42</sup> Sroufe, L. A., Egeland, B., Carlson, E., & Collins, W. A. (2005). Placing early attachment experiences in developmental context. Attachment from infancy to adulthood: The major longitudinal studies. in *Literature Review: Attachment and Disruption in Children of Separated Parents*, 2.

"She seems emotionally drained. She cries and throws tantrums from time to time. She is naughty and difficult and does not listen to her father much ... She is difficult and this puts so much strain on the time that she and her father are actually able to spend together."

**Mother, daughter aged 5 years**

Younger children had frequent tantrums, such as when they wanted to speak to a parent but couldn't, and found it difficult to cope with the fact that their parent was not around.

"When my eldest asks to speak to her dad and I have to say no because he's at work or sleeping she cries and goes crazy, it's sad to watch. Sometimes when she's upset, she asks daddy for cuddles and he can't give them to her so she cries even more."

**Mother, two daughters aged 23 months and 7 months**

"[She] gets very annoyed when she has to say "night night" to daddy [on the phone]. Her temper tantrums are very aggressive."

**Mother, daughter aged 4 years**

"My eldest child is very confused about where his dad has gone and is very emotional these last few days. He is prone to suddenly screaming at the top of his voice if he gets stressed about anything."

**Mother, three children aged 3 years, 2 years and 1 year**

"There was a heart-breaking incident one morning when she was around three and half, when my wife woke me up at around 5am London time sounding worried and told me to try and calm our daughter down. My wife later told me that our daughter got extremely upset when she heard a plane pass overhead. My wife said she was rolling herself on the floor throwing major tantrums and asking her mother to "bring the plane down so that 'baba' can alight". The episode lasted a whole half hour with me trying to calm her down on phone and assuring her I will be on the next plane."

**Father, daughter aged 5 years**

Among young adolescents, parents also reported outbursts of uncontrollable anger.

"I recently had to go to his school because he went through a period of anger which partly... I understand he's coming up to teenage years, but ... he had a few anger issues and [talked] about wanting to smash things and not really hurting himself but wanting to break and smash stuff. He did also mention not wanting to live anymore and he did go through a period of "why am I even bothering anymore?" The doctor talked about the situation and asked him why he thought he was having those feelings and he said to her, "it's because of my dad, because I can't see my dad". The doctor says we need to give him the tools to cope with his feelings as she knows we can't fix it."

**Mother, 12 year old son**

Frequent and severe tantrums in younger children, and anger and violent behaviour in older children can be caused by anxiety, stress and frustration, often as a result of disruption in family life and insecure attachment.<sup>4344</sup> These behavioural problems are exacerbated by the absence or emotional distance of the remaining parent due to their own stress and feelings of being unable to cope.

#### 4.1.3 Children have sleeping problems

Many parents also mentioned that their children experienced problems sleeping after being separated from a parent, or during visits to or from the absent parent, which is often a symptom of anxiety in children. Parents mentioned their children waking up in the night crying and suffering from night terrors.

“My son also suffers from night terrors. He had one a couple of weeks ago. It used to be really, really bad. He wakes up disorientated, scared and angry. He has been through that a few times – sometimes when we’ve just seen daddy, sometimes when there have been changes.”

**Mother, son aged 11 years**

“She wouldn’t go to sleep at night, she would scream all the time because he put her to bed quite a lot, so when I tried to put her to bed she was always crying after him to put her to bed. And she stopped eating and she just wasn’t very happy at all.”

**Mother, daughter aged 18 months**

In addition, parents mentioned cases where children displayed secondary nocturnal enuresis (bedwetting), occurring after the child was previously fully potty-trained, which often has an underlying psychological cause. Increased life stress and parental separation have both been linked to the onset of secondary enuresis.<sup>45</sup>

“My son calls out for him in the night and still wets the bed meaning he often ends up in my bed, using daddy’s pillow.”

**Mother, son aged 4 years**

“She has started to wet her bed often.”

**Mother, daughter aged 5 years**

#### 4.1.4 Children have eating problems

Eating problems were mentioned by a number of parents, ranging from children refusing food, becoming “fussy” and “difficult” with food, children not feeding themselves, and overeating or comfort eating.

<sup>43</sup> Lyons-Ruth, K. (1996). Attachment relationships among children with aggressive behavior problems: The role of disorganized early attachment patterns. *Journal of Consulting and Clinical Psychology*, 64(1), 64-73.

<sup>44</sup> Speltz, M. L., Greenberg, M. T., & Deklyen, M. (1990). Attachment in preschoolers with disruptive behavior: A comparison of clinic-referred and nonproblem children. *Development and Psychopathology*, 2(1), 31-46.

<sup>45</sup> Järvelin, M. R., Moilanen, I., Vikeväinen-Tervonen, L., & Huttunen, N. P. (1990). Life Changes and Protective Capacities in Enuretic and Non-Enuretic Children. *Journal of Child Psychology and Psychiatry*, 31(5), 763-774.

“My [son] has gone from being a really good eater to refusing to eat any kind of proper food whatsoever.”

**Mother, son aged 2 years**

“Between the age of one to two years my daughter had little real contact with her father... When she did have contact with him she would not allow him to feed her, comfort her night or day or put her to bed. During her three week visit she stopped eating and lost two kilograms.”

**Mother, daughter aged 3 years**

Problems with food and eating can develop if the child is going through a time of particular stress or worry, or a drastic change in routine. An environment where other family members are suffering from anxiety or stress, and insecure attachment to parents and caregivers can also affect the eating pattern of children and their relationship to food. Insecure attachment has also been linked to the development of eating disorders, such as anorexia nervosa and bulimia, in adolescents and young adults.<sup>4647</sup>

“My son comfort eats. There was this one time. He bought some marshmallows on a train and I said to him, “I didn’t know you liked them”, because we never have them in the house, and he looked at me and said, “They’re soft inside. Sometimes that cushions how I feel if I eat them”. He was only 10 years old. It stunned me. Obviously he’s bigger and obviously that’s what he does to cope. I know that’s going to impact him in the future. Sometimes I think I just shouldn’t buy the food – the biscuits and junk food – but that’s the only thing that makes him feel good sometimes and there’s nothing I can do about the situation with his dad.”

**Mother, son aged 12 years**

#### 4.1.5 Children are socially withdrawn

Parents also described their children exhibiting symptoms of social withdrawal from their peer groups, often presenting a marked difference to their temperament and behaviour before the separation. Social withdrawal has been attributed to anxiety and depression in children<sup>48</sup> and has been associated with an increased risk of a wide range of negative adjustment outcomes, including socio-emotional problems such as anxiety, low self-esteem, depressive symptoms, and internalisation of problems, as well as difficulties with peers and in school.<sup>49</sup>

Parents described their children struggling in social situations and often withdrawing into their own world, away from their peer groups.

<sup>46</sup> Kenny, M. E., & Hart, K. (1992). Relationship between parental attachment and eating disorders in an inpatient and a college sample. *Journal of Counseling Psychology, 39*(4), 521.

<sup>47</sup> Ward, A., Ramsay, R., & Treasure, J. (2000). Attachment research in eating disorders. *British Journal of Medical Psychology, 73*(1), 35-51.

<sup>48</sup> Rubin KH, Coplan RJ, Bowker JC. Social Withdrawal in Childhood. *Annual review of psychology.* 2009;60:141-171.

<sup>49</sup> *Ibid.*

“He is getting bullied by one person, he has become like a soft target. And I don’t know if that’s related but he has become so reserved. Yeah, he has become a target. We have been in school a few times, it’s horrible. He was really sociable and outgoing like in school, normally he is so happy and excelled, he is a very clever, very bright child, he loves to read, he loves books and now he is a target. He struggles, he cries every morning.”

**Mother, son aged 7 years**

“I usually try to avoid talking about [the separation], you know. I tend to role-play [on the computer] a lot. I am very good at distracting myself with my tablet or computer. I play games just to keep me... so I don’t have to think about it. I can pretend to be my character very well. It’s a bit like acting. It keeps you very distracted. When I do role-play that’s kind of what I feel. We live in a very broken world... [When I play computer games] I feel like I am in control.”

**Interview with 10 year old boy, separated from his mother for two years**

“He said things like the world is horrible, I don’t want to... not that I don’t want to live but almost that, and he found it very difficult to socialise.”

**Father, son aged 10 years**

“[It has affected my daughter] a lot, a lot. I mean... from her point of view, I don’t think she possibly consciously thought that I am not happy because dad is not here. I don’t think she consciously thought that. But in the nursery in Japan, they told my wife that she started to have some problems and before she was fine ... They said that she wouldn’t interact with the other children, like she used to ... that she had become a little bit bad, she doesn’t interact with the other children now. And also, a bad thing, but my wife only told me after, she didn’t want to upset me, but they were doing a drawing and [crying], they were drawing pictures and my daughter drew a picture because obviously she is small, only three, the picture is just scribbled, isn’t it?, at that age, but on my daughter’s scribble she only used the black crayon. The nursery staff gave her more crayons and said ‘why don’t you use these ones, why would you use only a black one?’ And they kept saying ‘why don’t you use other colours’ but she said ‘no, only black, I only got black’...”

**Father, daughter aged 3 years**

Many children also expressed a reluctance to engage in social situations and events where other children and parents would be present.

“[He] doesn’t want to take part in school functions where the entire family can be there. He doesn’t want to be the only one without his dad.”

**Father, son aged 14 years**

“Our daughter misses her father every day and especially when she sees her school mates, cousins playing with their fathers.”

**Mother, daughter aged 8 years**

In other cases, children relied heavily on their parents and siblings for emotional support, to the detriment of other social relationships.

“They feel awkward describing the situation to their new friends and go very quiet when it’s talked about. My son is very introverted and opens up to his dad more than to me, so at the moment he can only open up on Skype, which isn’t conducive to real bonding or empathy.”

**Mother, son and daughter aged 10 years and 6 years**

“He has become short tempered with friends and has an attitude that it doesn’t matter as they are going to be taken away from him.”

**Father, son aged 5 years**

“[Our two sons] formed a very close bond with each other to the detriment of their relationships with other children. Both struggle socially and our youngest son in particular gets very upset when he sees his brother playing with other children. Deep down I suspect he fears losing his brother like he lost his mum.”

**Father, two sons aged 7 years and 5 years**

“[My son] went from a bubbly little boy to very reserved in the first few months of the separation, he was angry at us both but couldn’t understand why Dad won’t want to live with him. He would go from angry kicking out to long periods of cry and thought Dad didn’t love him. They are still working at rebuilding their relationship and trust.”

**Mother, son aged 6 years**

Social withdrawal can also be seen as a coping mechanism in particularly stressful or traumatic situations. Children suffering from anxiety or depression have been found to often withdraw from social situations with peer groups. This in turn impacts the normal development of social skills, thereby serving to reinforce social anxiety and negative self-esteem, which may have lasting effects on a child’s development.<sup>50</sup>

#### 4.1.6 *Children withdraw emotionally from the absent caregiver*

Many parents mentioned that their young children refused to speak to their absent parent on Skype or over the phone, and had difficulty engaging with them once they were reunited.

“They sometimes say they “can’t be bothered” to talk to their dad today – this upsets him, and severs just a little bit more of their bond each time. They are used to having a very physical relationship with him, in that they use him as a climbing frame. Obviously this isn’t possible now.”

**Mother, son and daughter children aged 10 and 8 years**

<sup>50</sup> *Ibid*; Nelson LJ, Rubin KH, Fox NA (2005) Social and nonsocial behaviors and peer acceptance: a longitudinal model of the development of self-perceptions in children ages 4 to 7 years. *Early Educational Development*, 20, 185–200.

“Even now and despite after seeing his dad daily on Skype, our son is reserved and shy when he meets him. He is being too attached to me, insecure when left with others, quiet and reserved when seeing his father and not developing parental nurturing interaction.”

**Mother, son aged 1 year**

“Our five year old is now at a stage she realises that Skype is not a real connection as she wants me to physically hug and kiss her. So because of her disappointments, she sometimes simply refuses to come near the computer whenever I am on Skype with them. It is almost as if she is punishing me for not being there physically. This has tremendously affected my own outlook in life and constantly left me in despair.”

**Father, daughter aged 5 years**

“My son has taken a long time to associate his father as his father. He sometimes won’t speak to him on Skype or acknowledge him if he would rather do something else, which is very difficult for his father who has to watch his son grow up over the internet.”

**Mother, son aged 2 years**

Younger children who are separated from a parent have been found to emotionally withdraw from the caregiver, in comparison to older children who typically become more independent or aggressive.<sup>51</sup>

#### 4.1.7 *Children feel guilty and blame themselves for the parent’s absence*

Parents reported their children expressing feelings of guilt and blame and seeing themselves as responsible for their parent’s absence.

“It’s awful when a child whose father died and who is happy to find that he may have a stepfather suffers and cries that he was again left without daddy. The child does not understand the laws. He thinks he’s a bad kid.”

**Mother, son aged 5 years**

“Our child is suffering without a full family, often mentally depressed because of this. [He] often asks if his parents love him really and why parents do not live together, why he cannot walk and play with his father, why dad is leaving us (maybe because he’s a bad boy). [He] really wants to have and mom and dad together.”

**Mother, son aged 7 years**

Feelings of guilt and blame are common in children who experience parental separation.<sup>52</sup> While these emotions can be mediated through strong and supportive relationships with other family members, many parents mentioned feeling unable to cope and out of their depth while trying to navigate the visa and appeal system, in addition to trying to meet the financial requirements, which often meant working long hours. Feelings of guilt and blame

<sup>51</sup> Dreby, J. (2007). Children and power in Mexican transnational families. *Journal of Marriage and Family*, 69(4), 1050-1064; Smith, A., Lalonde, R. N., & Johnson, S. (2004). Serial migration and its implications for the parent-child relationship: a retrospective analysis of the experiences of the children of Caribbean immigrants. *Cultural Diversity and Ethnic Minority Psychology*, 10(2), 107.

<sup>52</sup> Herbert, M., (1996) *Separation and Divorce: Helping children cope*. British Psychological Society.

in children have been linked to lower perceived competence, psychological symptoms and behavioural problems.<sup>53</sup>

## **4.2 Wider impacts on families**

Interviews and questionnaire responses revealed the wider impacts of family separation and the inability to meet the financial requirements of the Rules on children and their families. Where families were separated, this often resulted in mothers and fathers becoming sole carers for their children and finding it difficult to cope alone. Anxiety and mental health problems were cited frequently by parents and these often have a direct impact on children, as well as limiting the support parents are able to offer their children. In addition, many parents mentioned working long hours, often in multiple jobs, in an attempt to meet the income threshold, causing further stress and exhaustion, and limiting the time spent between children and their remaining parent. Other parents mentioned being forced to rely on state benefits as a result of an inability to manage childcare responsibilities without the support of a partner. A number of mothers who had been left without their partner during the late stages of pregnancy and birth of their children mentioned feeling isolated and depressed, which has been shown to have a direct impact on the developing child, as well as affecting older children within the family.

### *4.2.1 Parents suffer from anxiety and mental health problems, with a direct impact on children*

“I don't ever see an end. Ever. I go to bed every night filled with dread.”

**Father, son aged 5 months**

In interviews and through the questionnaires, a large number of parents mentioned that they had suffered periods of depression and anxiety as a result of being separated from a partner and/or child. Working long hours while juggling childcare or supporting a family abroad, a direct result of an inability to meet the financial requirements, emerged as taking a huge psychological toll on all members of the family.

“The psychological wellbeing of the whole family was affected by the way we lived. I had to have therapy and lost my hair, and my depression (continual crying) affected the children.”

**Mother, two daughters aged 3 years and 5 years**

“Its sickening upsetting and I am forever in tears.”

**Mother, son aged 5 years**

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<sup>53</sup> Healy, J., Stewart, A., Copeland, A. (1993) The Role of Self-Blame in Children's Adjustment to Parental Separation, *Personality and Social Psychology Bulletin*, 19, 279-289.



“My friends have been very supportive especially when my depression has hit hard. I also receive invaluable support from my GP when in the past few years I’ve had to take time off for stress and depression, which resulted in some counselling too.”

**Mother, son aged 15 years**

“I am suffering with depression and as a result my children are feeling my pain. They don’t understand what is happening.”

**Mother, three children aged 1 year, 3 years and 7 years**

“There are days when my boys sort of stay away from me and they... it’s not that I... I don’t shout at them, they could just tell okay mummy is bad today. So they would just go in their room and they could read a book or they’d draw or they would play on the play station. But they will just stay out of my way.”

**Mother, three children aged 11 years, 10 years and 6 months**

Parents described older children as being much more aware of the situation and understanding the stress and worry their parents were feeling.

“My son is much more stressed and worried about me and finds it difficult to cope with my depression and constantly worries about money and whether we can afford to do activities/ buy new school uniform/ pay for additional tuition to help with his GCSE’s. My son has become much more considerate as he’s become older as he’s learnt how much the new visa rules impact on our lives and the additional stress it has caused to us... My son can understand and see the stress of us being apart and this is not good for him when he’s trying to do well at school and get good GCSE results – especially when he has a learning difficulty and has to work twice as hard.”

**Mother, son aged 15 years**

As outlined above, anxiety, stress and deteriorating mental health among parents has a direct impact on children within the family. High levels of parental stress have been linked to separation anxiety, attentional deficits and depression in children.<sup>54</sup> Stress has been shown to impact on a child’s developing brain<sup>55</sup> and extended periods of stress may also undermine a child’s physical development.<sup>56</sup> The following sections explore the causes of stress, anxiety and mental health problems among parents in more detail.

Child 1: Mum told us [stepfather had to leave the UK]. She was very sad. She cried and cried. It made me depressed because I hate seeing my mum when she cries.

<sup>54</sup> Huang, C. Y., Costeines, J., Kaufman, J. S. & Ayala, C. (2014). Parenting stress, social support, and depression for ethnic minority adolescent mothers: Impact on child development. *Journal of Child and Family Studies*, 23, 225-262.

<sup>55</sup> Lupien, S. J., McEwan, B. J., Gunnar, M. R. & Heim, C. (2009). Effects of stress throughout the lifespan on the brain, behaviour and cognition. *Nature Reviews Neuroscience*, 10, 434-445.

<sup>56</sup> Blair, C. & Raver, C. (2012). Child development in the context of adversity: Experiential capitalisation of brain and behaviour. *American Psychologist*, 67, 309-318; Thompson, R. A. & Haskins, R. (2014) Early stress gets under the skin: Promising initiatives to help children facing chronic adversity. *Future of Children*, 24, 1-6.

Child 2: Because then he starts crying, and when he starts crying, I start crying and when I start crying [baby sister] starts crying

Child 1: Yeah

**Interview with two children aged 11 and 10 years old**

#### 4.2.2 *Parents are forced to become the sole carer for their children*

“I am a single mother who has to look after my son as well as provide for my family. I did not want or choose to be in this position but I am being forced to by our government.”

**Mother, son aged 2 years**

When families are separated as a result of not meeting the Rules, one parent inevitably becomes a sole carer for children, with the other parent’s input in the upbringing of their child limited to telephone calls and contact over Skype. Various factors, such as the distance involved, the uncertainty of outcome, the stress placed on the parent caregiver, and sporadic contact with the absent parent, result in a situation that is often distinct from instances where parents separate of their own accord.

“It’s a struggle to cope.”

**Father, son aged 2 years**

In most cases where children were separated from a parent, the mother was the sole carer of the child. However, in other cases fathers returned to the UK with their school aged children while the mother remained abroad. In a small number of cases, both parents became sole carers, with one child living with a parent in the UK and the other remaining with a parent abroad.

“He has been incredibly strong when it comes to helping both me and his mother. You know I sometimes say certain things like ‘we have got to remain positive, that would show your mum that we are okay, because if we don’t, she is not going to get through it and we don’t know what’s gonna happen’, and so on. But then you see you are asking a nine-year old at the time to be strong. But as a father that’s what I find so stressful because it was an added burden of learning to be a father.”

**Father, son aged 10 years**

“At times [it] can be difficult as I’m always playing bad cop. Also it can be stressful not having someone to hand over to or even just to support me.”

**Mother, son aged 13 years and daughter aged 2 years**

Respondents who had become sole carers described struggling to cope alone, with children who were suffering from the separation themselves becoming extremely reliant on their one remaining parent as a result. Parents described feeling drained and stressed trying to raise children while also struggling with the pain of separation from their partner.

“The children turn to me for everything, which is draining on me.”

**Mother, daughter aged 6 years and son aged 10 years**

As mentioned above, this can in turn exacerbate behavioural and developmental problems in children.

“My youngest suffers from sleep terrors and is waiting to be assessed for autism. He is nearly three and not talking. He needs a better family environment and I need support.”

**Mother, son aged 2 years**

#### 4.2.3 Mothers are forced to give birth without their partner

“I was so much frustrated and suffered during my pregnancy I cannot explain”

**Mother, daughter aged 15 months**

A number of respondents mentioned that they were forced to give birth alone in the UK without the support of their partner. They described the pain and difficulty of separation during the late stages of pregnancy, the birth of their child and the first months of their child’s life. Pre-natal stress has been shown to contribute to adverse birth outcomes in babies.<sup>57</sup>

In most cases, the mother was a British citizen who had returned to the UK for the birth in order to be together with wider family networks and had assumed that their partner would follow shortly. However, their partners were often not even granted visitor visas during this time. Where a visitor visa was refused, mothers described the shock of receiving the refusal during a vulnerable time, as well as feelings of intense stress and panic as they realised that they would be alone for the birth.

“[My parents] have been a huge emotional support, especially when I was in the UK on my own and pregnant without my husband there. During this time my husband was refused a visitor visa. My mum and cousin also came to the birth of our son to support me. It was heartbreaking, crying for my husband while giving birth and knowing he wouldn’t see our son, so my mum was a crucial person at that point.”

**Mother, son aged 15 months**

<sup>57</sup> Lobel, M., DeVincent, C. J., Kaminer, A., & Meyer, B. A. (2000). The impact of prenatal maternal stress and optimistic disposition on birth outcomes in medically high-risk women. *Health Psychology, 19*(6), 544; Mulder, E.H., Robles de Medina, P.G., Huizink, A.C. Van den Bergh, B.R.H., Buitelaar, J.K., Visser, G.H> A. (2002). Prenatal Maternal Stress: Effects on pregnancy and the (unborn) child, *Human Development, 70*(1-2): 3-14; Dole, N., Savitz, D. A., Hertz-Picciotto, I., Siega-Riz, A. M., McMahon, M. J., & Buekens, P. (2003). Maternal stress and preterm birth. *American journal of Epidemiology, 157*(1), 14-24.

“[It was] heart-breaking and devastating because I obviously had this perceived idea how the birth would go and he would be there, and then the first time [the visitor visa was refused] I was like we would just try again maybe luck, but then the second time I was like it’s definitely not going to happen.”

**Mother, son aged 9 months**

Mothers described feeling isolated and suffering from stress and depression during the pregnancy and after the birth as well as feelings of desperation as they could not see a way for their family to be together. An inability to work in order to meet the income requirement while heavily pregnant or caring for a young baby intensified feelings of desperation, stress and anxiety.

In many cases mothers were forced to rely heavily on wider family networks, where available, with their own parents often stepping in to provide the emotional and moral support that would have come from their partner.

“We are not a family. Our only child does not have his father and his father never got to see his son being born. He has never held him or kissed him. I'm a single parent trying to raise a child alone and our child is being affected mentally and emotionally. As for us, the parents, we are both very depressed and extremely stressed. It is hell! Words do not describe our pain and misery.”

**Mother, son aged 1 month**

The enforced separation was also very difficult for fathers who were unable to support their partners during the pregnancy and birth of their child. Many fathers described feeling helpless and distant from their partner as well as fearing that they were unable to bond with their child.

“To be honest there are some days I don’t want to come on Skype because it’s just too hard... days like this, I didn’t want to come on, I enjoy seeing her so much and she changes almost every day, she is always doing something new.”

**Father, daughter aged 6 months**

“Without my daughters and my wife, I feel in my heart that I miss some part of my body.”

**Father, two daughters aged 9 years and 9 months**

The first few months of a child’s life are a vital time for both parents to establish a bond with their child. Absence of a parent may have serious impacts on the relationship that forms once they are reunited with their child.

“My elder daughter ... started by saying ‘ba, ba, ba’. ‘Ba’ means baba which is dad in Arabic, because I was with her. My younger daughter just started with ‘le’, which is ‘why’... Now the first word is ‘le’ in her life.”

**Father, two daughters aged 9 years and 9 months**

Furthermore, the absence of one parent also meant in some cases that older children took on a considerable burden of responsibility in helping to care for younger siblings, especially when their remaining parent was struggling to cope alone.

Child 1: We help a lot. We make her bottles and we feed her and we look after her. We play with her when mum's asleep. Sometimes [sister] wakes up in the middle of the night for no reason she just wants to play... I think that's why sometimes she calls me dada. Being a big brother means responsibility.

Child 2: And matureness

Child 1: If [stepfather] was here we would kind of have less responsibility. Because he's in [country] we kind of do his job for him. Looking after your mum and your baby sister. It's not right. Being a father means looking after the family.

**Interview with two children aged 11 and 10 years old**

#### *4.2.4 Parents work long hours to meet the financial requirements and the additional costs of a separated family*

In order to try to meet the financial requirements, some parents have to work excessively long hours. This led to additional childcare costs, as well as reducing the amount of time they could spend with their children. This impeded the ability of parents to support and comfort children who were themselves suffering from the separation. In addition, the costs of childcare, visa applications, and trips abroad for the family to spend time together all created a significant financial burden and strain, compounding feelings of stress and anxiety.

"I am currently doing two jobs to try and meet the income threshold. I work nearly 50 hours per week, and having a child makes it so difficult. It breaks my heart when I cannot spend time at home or be a part of school assemblies. This income threshold has made my life very difficult."

**Mother, daughter aged 8 years**

"I don't know where to go and no one helps. We don't have endless money for visa applications and flying back and forth. All my savings have already gone on travelling and visa expenses. You don't choose who you fall in love with. It's incredibly difficult."

**Mother, three children aged 13 years, 11 years and 2 years**

Due to the pressures of supporting their children alone and increased outgoings, as mentioned above, a number of respondents mentioned feeling forced to put their own further education and desired career development on hold. This further impeded their ability to reach the income requirement.

"My choices are very limited. I have had to leave university to raise my child and it looks unlikely that I will be able to return to complete my final year."

**Mother, son aged 2 weeks**

"I have no family support, caring alone for my infant since he was delivered. Childcare and living costs have made me unable to continue my postgraduate education and career in mental health nursing due to difficult shift patterns and the lack of social support. The

inability of my partner to provide us with ... support with childcare has forced me to stay at home longer than ever and change my career path which has been difficult on all members of the family.”

**Mother, two children aged 10 years and 1 year**

“I haven’t finished with my degree. It’s like do I get paid £240 pounds a week or do I give up my dreams? I feel stuck.”

**Mother, three children aged 11 years, 10 years and 6 months**

In cases where the British or settled parent had returned to the UK to find work, leaving their partner and children living abroad, the burden of supporting two households emerged as a significant financial and emotional strain. One father estimated the cost of travel, lost earnings, visas and supporting his wife and children abroad was over £12,000 a year.

“I do nothing but work, travel to and from work and sleep. I have no time for a ‘life’. I am trying to satisfy these insane income requirements to be able to have my human rights of family life back. My wife and family are my “life”. My wife is my best friend and existing without her is a daily struggle.”

**Father, 14 year old son**

#### 4.2.5 *Families are stranded outside the UK*

Many families had not been separated but instead felt they had been forced to leave the UK or remain abroad in order to remain together as a family, as they could not meet the requirements of the Rules. Families often had strong motives for wishing to relocate with their children to the UK. Living abroad was often at the expense of children’s health, education and relationships with extended family networks.

“I was close to retirement age and I was ready for retirement. Also, my parents... my mother had a pancreatic attack, we thought she wasn’t going to live. My father was very infirm at the time, they are nearly 90 now. Number three: the pollution was not good for my son, it is a very polluted city. Lastly, he was having a horrendous experience [in school]. He cried so much.”

**Father, son aged 10 years**

A number of respondents commented on the poor quality of healthcare abroad and on health problems exacerbated by local conditions. For example, two brothers were hospitalised due to malaria and another child suffered from respiratory problems as a result of chronic air pollution.

“We have to [stay in the UK]. We have to, for my babies, like I need family support, I don’t have any support there. My husband has no support. Like I said the sun blinds my baby, it really hurts her eyes, she has got a high risk of skin cancer, we have to be very careful. Now, we are in [the UK] it rains all the time, she plays outside and she is really happy, it’s so lovely to see this. I don’t have to worry so much, my mum helps me and my uncle, my cousin, everybody is so helpful. And I feel at peace.”

**Mother, three children aged 7 years, 3 years and 1 year**

“If I moved to Nigeria I would be unfamiliar with the place. It’s very hot and you have to wear cream every day for the mosquitoes that give you Malaria.”

**Interview with 9 year old child**

In all of the above cases, parents were forced to make difficult choices, between the health and education of their children and commitments to family members, or to return to Britain and leave a partner behind. This caused families huge amounts of stress and anxiety which, as detailed above, can have serious effects impacts on children’s well-being.

#### 4.2.6 *Children lose relationships with extended family*

Where families had to relocate abroad to be together, this often meant severing children from their close extended family networks in the UK. As discussed above, many respondents had relied on their own parents and adult siblings for support through the visa process. grandparents often provided childcare while parents worked to meet the income requirement. In addition, a number of respondents had moved back in with their own parents to save on expenses. This inevitably resulted in very close bonds forming between children and their extended family members in the UK, which were ruptured when the family moved abroad. This was a major contributor to the stress and anxiety felt by families considering relocation, and additional pain and trauma for children.

“If it really has to come down to us having to move to [other country] then somehow we are going to have to sort something out. But again it worries me as my children have strong bonds with members of family here and [I] fear that these bonds will be lost. I speak from first-hand experience, I lost out on having a good family life and I really don’t want my children feeling the same when they’re older.”

**Mother, two daughters aged 23 months and 7 months**

“My daughter is very, very close to my mother and siblings”

**Mother, daughter aged 5 months**

Many studies on child development have demonstrated the important role grandparents and wider family members can play in the lives of children during stressful times, such as parental separation, such as through moderating problematic behaviour and emotional disturbance during adolescence.<sup>58</sup> Adjustment problems and depressive symptoms among young people experiencing a family transition have been shown to be reduced among young people who reported feeling attached to their grandparents.<sup>59</sup> Where strong emotional

<sup>58</sup> Buchanan, A. & Ten Brinke, J. (1997). *What happened when they were grown up: Outcomes from early parenting experiences*. York. Joseph Rowntree Foundation.

<sup>59</sup> Attar-Schartz, S., Buchanan, A., Flouri, E., Griggs, J. & Tan, J. 2009. Grandparenting & adolescent adjustment in two-parent biological, lone-parent and step-families. *Journal of Family Psychology*. 23. 67-75; Lussier, G., Deater-Deckard, K., Dunn, J. & Davies, L. (2002). Support across two generations. *Journal of Family Psychology*, 16, 363–376; Silverstein, M., & Ruiz, S. (2006). Breaking the chain: How grandparents moderate the transmission of maternal depression to their grandchildren. *Family Relations*, 55, 601-612.

bonds formed during these periods are broken, children have been shown to experience a loss of attachment similar to that of a parent.<sup>60</sup>

Furthermore, where families decided to stay in the UK, it was often difficult to maintain relationships with extended family members abroad. Due to the financial burden of the visa process and childcare and the need to work full-time to satisfy the visa requirements, many parents could not take time off work or pay for visits in order to ensure that their children maintained relationships with family abroad. This meant that children were missing out on important relationships and exposure to culture and language that otherwise would have been a part on their lives.

“My husband’s family misses the children very much, as is to be expected... I told them that we would visit at least every two years, but we won’t be able to afford to visit and so they are likely to become strangers to the children.”

**Mother, daughter and son aged 6 years and 9 years**

“Due to visas and money issues, our daughter only knows her paternal family via Skype.”

**Mother, daughter aged 1 year**

“[D]ue to the financial burden of childcare we have been unable to visit and she has been unable to form any kind of relationship with her grandparents who clearly adore her and are desperate to get to know her.”

**Mother, daughter aged 9 months**

The separation of children from their wider family networks was not just geographical. Young children separated from their non-British parent sometimes also lost their absent parent’s mother tongue, as they became more familiar with English. A number of parents lamented that this had created a rift between their children and family living abroad.

“They have no relationship with their maternal grandparents now as they cannot speak their language. It breaks my heart because they used to be so close, with my wife’s mother in particular who stayed with us for several months to help when they were babies. My wife’s mother is so sad. She feels she has forever lost her beloved grandchildren.”

**Father, two sons aged 5 years and 7 years**

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<sup>60</sup> Dreby, J. (2007). Children and power in Mexican transnational families. *Journal of Marriage and Family*, 69(4), 1050-1064.



“Unfortunately [my daughter] has no relationship with my partner’s family and will struggle to ever form a relationship with them as I’m unable to teach her Swahili and they can’t speak English.”

**Mother, daughter aged 5 months**

Extended family relationships, including grandparents, have been shown to be particularly vital for children from an ethnic minority or mixed cultural background, as they provide a sense of identity and belonging which can mediate feelings of isolation and confusion in adolescents.<sup>61</sup> Maintaining these relationships is particularly important where children have experienced relocation to another country, which is often stressful in itself.

#### 4.2.7 *Permanent break-up of families*

Sadly, in a small number of cases, respondents mentioned that the emotional and psychological strain of the separation had caused irreversible damage to the relationship with their partner.

“At the moment I am utterly terrified because I feel my wife is on the brink of giving up. My head is pounding, my heart is aching with pain. Just the thought of not being with my family makes my stomach sick. I can never imagine a life without my wife and daughter because they mean the world to me. I don’t know why I am venting to you and you are a total stranger, the truth is I am scared of losing my family.”

**Letter from a father of a six month old British daughter**

“My husband and I are separating in part because we can’t take the stress anymore. I have an elderly mother in England who needs me to be there. We feel like the Home Office is 75-100% responsible for the demise of our ten year marriage because of the stress it has caused us... My children will hopefully see daddy once a month now if he continues living in Ireland, if he returns to America it will likely be once a year.”

**Mother, two sons aged 4 years and 4 months**

### 4.3 *Conclusion*

Thousands of children are being forced to grow up without a parent solely as a result of these Rules. Children are growing up in broken homes, separated from a parent, and in some cases siblings, for prolonged and unknown lengths of time. In further cases, children face being torn from the life they know in the UK in order to be reunited as a family abroad. Other children are prevented from returning to the UK, their country of nationality, and are effectively exiled abroad in countries with far lower health and education standards.

The academic literature on child psychology demonstrates that children benefit from stable relationships with parents and caregivers and that separation from either parent can be harmful. In surveys and interviews, parents mentioned that their children had exhibited a

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<sup>61</sup> Joint Council for the Welfare of Immigrants *Harsh, Unjust, Unnecessary: Report on the impact of the Adult Dependent Relative Rules on Families and Children 2014.*

wide range of emotional and behavioural problems which they attributed to the separation. These were also reported by children themselves and observed in interviews with children and their families. Many of the issues highlighted correspond to symptoms of anxiety, depression and insecure attachment, which may have a significant impact on a child's development and long-term wellbeing.

The emotional, behavioural and psychological impacts that these circumstances have on children and their families, as outlined in this section, cannot be in their best interests.

"The first time at Easter when [my husband and son] came to visit after four months, I remember my son, he had a chocolate from England. He had kept it in his pocket for the 15 hour flight from Russia. And when the first time he saw [his sister] he gave it to her."

**Mother, two children aged 6 years and 4 years old**

## 5. Why have the financial requirements caused problems?

Family reunification for British families is currently very difficult with many hurdles in place. The most recent MIPEX (Migration Integration Policy Index) assessment, an independent comparative study of the conditions for integration of migrants in 38 developed countries, found that the UK came last out of all 38 countries for its family reunification conditions:

*Separated families [in the UK] now face the least 'family-friendly' immigration policies in the developed world.*<sup>62</sup>

The financial requirements, delays, language tests, fee levels and restrictions on access to benefits were all identified as contributing to this score. This report is concerned with the effect of the financial requirements but the impact is increased by some other factors as well, particularly fee levels.

The previous section of this report showed how the financial requirements have led to significant difficulties for children and their families. This section looks in more detail at the requirements themselves. It starts by considering aspects of the requirements that have proven most problematic: the high income threshold and its discriminatory impact, the rigidity of the requirements, the cost of applications and the exacerbation caused by refusal of visitor visas. It continues by showing that these unintended consequences have arisen because the fiscal benefits of the income requirement have been overstated. Finally, the section examines the integration claims made by the Government in justification of the requirements.

### 5.1 The income threshold is too high and is discriminatory

The income threshold of £18,600 is 138% of the minimum wage if paid on an annual basis. Someone working 40 hours per week on the minimum wage (currently £6.50 per hour) and paid for 52 weeks per year would earn £13,520 pa.<sup>63</sup>

“There is no way anyone with two children can earn that amount. I mean, even when I was working 42 hours a week, I didn’t earn that amount. [There are] not that many people [who] earn that amount really unless you are really high up in whatever you do. I worked in a law court and I never earned that much money.”

**Mother, two daughters under three years, living in Northern England**

In 2012, when a minimum income requirement of £18,600 pa was first proposed, Oxford University calculated that it could not be met by 47% of the UK’s adult population.<sup>64</sup> In its Impact Assessment, the Government estimated that the number of family visas would decrease by between 35% and 45% (an annual reduction of between 13,600 and 17,800).<sup>65</sup>

<sup>62</sup> Huddleston, T., Bilgili, O., Joki, A-L, and Vankova, Z. (2015) *Migrant Integration Policy Index 2015*.

<sup>63</sup> From April 2016, a new National Living Wage of £7.20 an hour for the over 25s will be introduced. If the income threshold remains unchanged, this will mean (on the basis of 40 hours per week and 52 weeks per year) an annual income of £14,976, still substantially below the income threshold under the financial requirements.

<sup>64</sup> *Women, Young People* n.13 above.

<sup>65</sup> *Impact Assessment* n.12 above, pp. 19-20.

Appendix F shows that, as predicted, numbers of successful applications fell after 2012 although the actual scale of the reduction is not immediately apparent due to the implementation of the pre-entry language test in 2010 which had not yet fully worked its way through the figures.

“This is where I have only been able to come to the conclusion that the Government policy is about numbers because my wife is not entitled to any benefits for 5 years. Now, if she got a spouse visa and she was able to work, without benefits, she would be putting money in ... you know she would be doing what a ‘good immigrant’ does. But it must be about numbers, it must be literally just about numbers... It’s just a number’s game. This is what really gets to me. They are not saving money, they just want one person less.”

**Father, son aged 10 years**

In relative terms, the UK income requirement appears to be the highest in the world. It was the second highest in absolute terms out of twenty developed countries (European states plus United States, Canada, New Zealand and Australia) surveyed by the Migration Policy Group in 2012.<sup>66</sup> The only country with a higher threshold was Norway, where the minimum is now NOK 232,400, about £24,850 pa. However, average earnings in Norway are more than 160% of those in the UK and this represents a modest wage by Norwegian standards.<sup>67</sup> In addition, the Norwegian minimum is more flexibly applied.<sup>68</sup>

The difference between the UK’s financial requirements and those operating elsewhere is significant. In other European countries, the income threshold is discretionary or linked to either welfare levels or the minimum wage. Leaving aside Norway, the only other European countries to operate a higher threshold than these is Belgium where the income threshold is 120% of the minimum subsistence level.<sup>69</sup> In France, there is no income requirement for citizen sponsors. For permanent resident sponsors, it is only above the minimum wage for families with more than three children (110% of the minimum wage for families with three children and 120% for families with four or more children). The resources of the incoming spouse can count towards this total.<sup>70</sup>

While the minimum income in the Netherlands is currently 100% of the minimum wage, this has not always been the case. In 2004, the Dutch government raised their minimum income requirement to 120% of the minimum wage. In 2010, in the case of *Chakroun*, the Court of Justice of the European Union ruled that it breached the Family Reunification Directive.<sup>71</sup>

<sup>66</sup> Huddlestone, T. ‘Can’t Buy Me Love’; UK sets one of the World’s Highest Income Requirements for People to Reunite with Family, 2012, Migration Policy Group, Brussels

<sup>67</sup> In 2013, the average wage for a full-time employee in Norway was \$81,685 compared to \$49,231 in the UK ([https://stats.oecd.org/Index.aspx?DataSetCode=AV\\_AN\\_WAGE#](https://stats.oecd.org/Index.aspx?DataSetCode=AV_AN_WAGE#)).

<sup>68</sup> A conversation in August 2012 with Anne Staver, Institute for Social Research, Norway and an expert on Norwegian family reunification, revealed that the UK income level may be even more onerous relatively speaking if one takes into account minimum and average salaries. The income required to meet the Norwegian threshold is attainable by a low-skilled full-time worker.

<sup>69</sup>

[https://dofi.ibz.be/sites/dvzoe/FR/Guidedesprocedures/Pages/Regroupement\\_familial/Les\\_moyens\\_de\\_subsistance\\_stables\\_reguliers\\_et\\_suffisants.aspx](https://dofi.ibz.be/sites/dvzoe/FR/Guidedesprocedures/Pages/Regroupement_familial/Les_moyens_de_subsistance_stables_reguliers_et_suffisants.aspx).

<sup>70</sup> Code de l’entrée et du séjour des étrangers et du droit d’asile (CESEDA), art L411-5.

<sup>71</sup> Case C-578 *Chakroun v Minister van Buitenlandse Zaken* 4 March 2010.

Following the decision, the minimum income for all sponsors reverted to 100% of the minimum wage.<sup>72</sup>

The severity of the income requirement during the period that it was elevated was criticised by the Netherlands Council of State, various experts and the European Commission. A quantitative and qualitative study of its impact was undertaken on behalf of the Dutch government by two research bodies and this provides the most rigorous study so far of the effects of a high income requirement. The quantitative element, based on 23,407 couples, showed that the increased income threshold combined with a higher minimum age had led to a 37% decrease in successful applications, mostly caused by the financial requirements. The decline was most marked amongst Turkish, Moroccan and Surinamese sponsors, amongst women across all groups (particularly native Dutch and other non-Western groups) and among those under 28.<sup>73</sup>

The qualitative study examined 50 couples of Turkish, Moroccan and Dutch origin, who were unable to meet the income and/or age requirement. It showed that the income requirement had a number of effects including:

- Changes in employment patterns including working more hours, in undesired jobs or at the expense of additional education or training
- Migration to another European country
- Termination of the relationship
- Health and stress symptoms as a result of separation.

While the Dutch study did not specifically look at the effects of children, as this study has done, it is consistent with the impact described here of a high income requirement.

High income thresholds do not appear to apply outside Europe. In the US, an affidavit of support (a promise to repay any means tested benefits paid to the migrant) is taken from the sponsor alone or jointly with another person, provided one of them earns at least 125% of the federal poverty line. Therefore not only is the threshold lower but third party support is permitted.<sup>74</sup> In Australia, the sponsor undertakes to provide adequate accommodation and financial assistance as required to meet their partner's reasonable living needs (including the cost of English classes) for the first two years.<sup>75</sup>

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<sup>72</sup> A. Leerkes and I. Kulu-Glasgow (2011) 'Playing Hard(er) to Get. The State, International Couples and the Income Requirement' *European Journal of Migration and Law* 13, 95-121, 111-114.

<sup>73</sup> International gezinsvoorning begrensd (2009) *International family formation restricted? An evaluation of the raised income-and age requirements with regard to the migration of foreign partners to the Netherlands*. Summary, Cahier 2009-4

<sup>74</sup> <http://www.uscis.gov/green-card/green-card-processes-and-procedures/affidavit-support>.

<sup>75</sup> <http://www.border.gov.au/forms/documents/40sp.pdf>.

“My friend went to Australia and after maybe three months or six months, I can’t remember, she brought her husband and two children. No problem. I thought, she is a student allowed to go to Australia. I married an English man, I have a British son, and I can’t live in the UK. It’s silly.”

**Mother, son aged 10 years**

In Canada, the sponsor also undertakes to provide for the applicant’s basic needs.<sup>76</sup> The UK is out of step not only with its European neighbours but with the entire developed world in requiring such a rigid and high income before sponsorship is possible.

The UK income threshold effectively prevents a very substantial section of the population, including many individuals who work full-time and are earning at or above the legal minimum wage, from being able to live in their own country with a non-EEA partner. Many British citizens working full-time in modestly paid but vital occupations, particularly outside London and the South East, can never earn that amount and are therefore indefinitely precluded from sponsorship. The majority of NHS health care support workers, for instance, were reported in 2013 to earn between £14,153 and £17,253 pa.<sup>77</sup> The APPG in its Inquiry into Family Migration heard from auxiliary nurses, shop assistants, office administrators and security guards who could not hope to meet the threshold. Young people in professional training also often earned too little. These individuals of modest means were also the least likely to be able to make up any shortfall through savings.<sup>78</sup>

“I mean this £18,600, this number, they did not take different areas into consideration ... Down in the South it’s easier to earn that amount of money but certainly in [Yorkshire], in these areas this is not so easy.”

**Mother, son aged 4 years**

As noted, the income requirement level is not met by substantial sections of the population. However, some sections of the population are particularly badly affected. While the Migration Observatory found in 2012 that 47% of the adult population would not meet the £18,600 income threshold, that percentage rose to 61% for women compared to 32% for men. This is unsurprising given that more women than men work part-time and that they are paid less per hour than men even if they do work full-time. Table 3 and Figure 3 of Appendix F show that, since 2012, there has been a steeper decline in the number of successful female sponsors than of male sponsors.

The income threshold also discriminates by age, ethnicity and place of residence. In general, younger workers earn less than older ones and are less likely to have savings that they can use to compensate for their low earnings. The Migration Observatory found that 58% of people aged between 20 and 30 years would be unable to meet the income requirement compared to 35-45% amongst those aged between 30 and 60.<sup>79</sup> Retired individuals are also

<sup>76</sup> <http://www.cic.gc.ca/english/information/applications/guides/3900ETOC.asp>;

<sup>77</sup> All Party Parliamentary Group on Migration *Report of the Inquiry into New Family Migration Rules* (June 2013) p.22.

<sup>78</sup> *Ibid*

<sup>79</sup> *Women, Young People* n.13 above.

adversely affected, especially those who are returning to the UK after living abroad, as they are unlikely to find work above the financial threshold.

“Within a matter of a few weeks I’d realised that yes, I could get lots of part-time work as a waiter, but I could no way earn £18,600 a year. Because of my age, I would probably never get a job that would pay that much money. I was told, a 66-year-old, you know, you probably will never get the income. That was when we decided to apply for the visitor visa because we just waited so long. We kept thinking it was better to work, it was just another couple of months, maybe. That was two years ago”.

**Father, son aged 10 years**

Ethnicity also has an impact on wages. Some populations, notably those of Pakistani and Bangladeshi origin, earn significantly less than the average for other groups. Gender and ethnic origin may combine so that some individuals are likely to be on particularly low incomes. For example, in 2011, the median annual wage of a woman of Pakistani origin was £9,700 pa compared to £15,500 pa for a man of Pakistani origin, £14,600 pa for a woman of white British ethnicity and £24,000 for a white British man.<sup>80</sup>

The financial requirements are the same wherever the sponsor lives even though wages vary extensively by region. This means that the ability to meet the financial requirements is partially dependent on location. The Migration Observatory found that, in June 2012, 56% of people working in Merseyside, 51% in Wales and 48% in Scotland earned below the income threshold.<sup>81</sup> The regional effect is exacerbated by gender pay differences:

Median Weekly Wage by region and gender 2014<sup>82</sup>

Region	Men	Women
North West of England	£470	<b>£322.20</b>
Wales	£463.80	£309.90
London	<b>£651</b>	£480.80

As the cost of living in regions with low wages also tends to be lower, it does not follow that purchasing power is less and there would seem to be a strong case for some regional variation in the income threshold. A number of interviewees living in low cost regions told us that few jobs pay more than about £15,000 pa. Others had been advised to move to London to earn higher wages, but did not have the social networks there to support them.

In its report on the income threshold, the Migration Advisory Committee said that it had not examined the case for regional variations in the income threshold in any depth but that they could not see a clear case for them. However, the evidence that has been gathered in the period since implementation suggests that, while the income threshold is so high, recognition of regional variations in income is needed, as the experiences of survey

<sup>80</sup> Home Office *Family Migration: Evidence and Analysis* (2011), p.8,. Table 9.

<sup>81</sup> *Ibid.*

<sup>82</sup> Office of National Statistics *Annual Survey of Hours and Earnings* (2014) Table 5a.

respondents highlight. The arguments for and against regional variations are considered further in Appendix E.

## **5.2 The Financial Requirements are Inflexible**

One criticism that has frequently been made of the financial requirements is that they are too rigid. They take account only of the sponsor's position at the moment of application and do not look at the future likely trajectory of the family nor at other sources of support that may be available, as happened under the former rules. If these were taken into consideration, it is likely that far more applicants would meet the income threshold but there is still little risk of recourse to public funds (which are anyway not available for five years).

“And I always get told that ‘we don’t want your husband to be a burden on society’... But if he was granted a visa, it says no recourse to public funds, we know that, we don’t care about benefits... we just want to be here in peace.”

**Mother, three children aged 7 years, 3 years and 1 year**

The Government is concerned to ensure that applicants present reliable evidence of their financial standing and that arrangements are sustainable. However, the current position seems to go beyond what is reasonable, particularly by excluding, in all but a small number of cases, all sources of support other than the sponsor's earnings at the time of the application. Even a sponsor who does qualify under the current rules is not immune to the usual hazards of redundancy or illness. No system can ever be 100% watertight and post-entry checks will anyway take place after 30 and 60 months. Applicants cannot now claim welfare benefits for at least five years after admission and the Government has not shown that imposing rigid financial requirements are a reliable way to prevent welfare reliance by the applicant five years later.<sup>83</sup>

There are seven main ways in which the financial requirements are applied with excessive rigidity:

- The incoming partner's future income cannot count towards meeting the threshold
- Wider family support cannot be taken into account
- There is no reduction in the income threshold if free or low cost accommodation is available
- The rules on savings are inflexible and unduly onerous
- The rules on families moving back to the UK are too inflexible
- The evidential requirements are very demanding
- Visitor visas are often refused to applicants who cannot meet the financial requirements.

<sup>83</sup> In its impact assessment, the government calculated the likely welfare savings of the financial requirements on the basis that families containing a migrant spouse and who are now refused under the financial requirements would, if they had been admitted, claimed benefits in the same proportions as the population as a whole; *Impact Assessment* n.12 p.59.



### 5.2.1 The incoming partner's future income cannot count towards meeting the threshold

"If my husband could join me in the UK I would be out of housing benefit and council tax benefit, working tax credit. I wouldn't be eligible anymore. If anything we would be putting more in because I could get more hours in and maybe take a second job. At the moment I can't leave my son alone that much, he's only 12 I don't want him to have to be without us both. If my husband was here we could share childcare."

**Mother, son aged 12 years**

The rules that applied until July 2012 considered the overall financial prospects of the couple including the earning prospects of the migrant partner, which were usually evidenced through a job offer. However, the Family Migration Consultation said that:

'... in the current economic climate, we do not consider it appropriate to take into account their potential earnings should they gain employment here. We also consider that this is difficult for caseworkers to apply or verify in practice'.<sup>84</sup>

However, migrant partners do relatively well in the labour market and it seems arbitrary to exclude their earnings if there is evidence that they will have work. A government analysis published in 2011 showed that 66% of male migrant partners work compared to 64% for the male population as a whole and 68% of all male migrants. Female participation is somewhat lower at 44% compared to 53% of the female population as a whole and 52% of all female migrants.<sup>85</sup> This is likely to be due to women's greater involvement in child rearing in the years after migration as a partner. Spousal migrants also command good salaries. The same study showed that men who entered as partners earn, on average, £21,300 pa, well above the income threshold. Female partners earn less, £15,600 pa on average which is below the income threshold but above the £15,000 median wage for the entire female population of the UK and a significant contribution towards meeting the income threshold.<sup>86</sup> A recent study of female spousal migrants found that over 90% had completed formal education and 58% had graduate or postgraduate level qualifications.<sup>87</sup> The employability of migrant partners is confirmed by the survey carried out for this report. Half of the partners have university degrees and many are in skilled or highly skilled occupations, for example, as a chef, logistical administrator, engineer, maths teacher or medical doctor.

The Government's other concern was obtaining reliable evidence of earning capacity but this does not seem to be an insuperable objection. Even under the current rules, sponsors returning to the UK may have job offers taken into account. The Government could not provide, when requested, evidence that applications involving job offers had been wrongly granted under the old rules.<sup>88</sup> The MAC, in its report, acknowledged that there was, in principle, a strong case for including the migrant partner's earnings because it is total household earnings that will determine whether the household is a burden on the state,

<sup>84</sup> *Family Migration Consultation* n.12 above, p.23.

<sup>85</sup> *Family Migration: Evidence and Analysis* n.80 pp.7-8.

<sup>86</sup> *Ibid.*

<sup>87</sup> Eaves Project "Settling In" - *Experiences of Women on Spousal Visas in the UK* June 2015.

<sup>88</sup> Immigration Law Practitioners' Association UK Border Agency: *Family Migration: A Consultation – Response from Immigration Law Practitioners' Association (ILPA)* October 2011.

rather than simply the sponsor's earnings.<sup>89</sup> It offered to advise the Government on how, if prospective earnings were taken into account, the income thresholds could be adjusted, an offer which does not seem to have been pursued.<sup>90</sup>

The inclusion of migrant partners' future earnings would seriously mitigate the effects of the financial requirements as, taken together, most couples would earn enough to meet the income threshold. It would also reduce the discrimination faced by female sponsors. Included amongst the respondents to the survey are several women whose earnings are reduced because of their childcare responsibilities but whose partners have significant earning capacity. One British respondent with three children reported that she is on benefits and living in substandard accommodation while her husband is stranded abroad even though he has a good degree in engineering obtained in the UK and is clearly employable.

### 5.2.2 Wider family support cannot be taken into account

"My brother-in-law and sister, they would love to help but they don't take that into account, they are looking at my income only."

**Mother, son aged 9 months**

A number of survey respondents and interviewees told us that their parents or other close relatives are willing and able to contribute to meeting the income threshold but this is not permitted. Prior to implementation of the financial requirements in July 2012, the continuing support of parents and other relatives (known as 'third party support') could be taken into account provided there was satisfactory evidence of ability and willingness to contribute. The exclusion of third party support under the current rules was explained in the Statement of Intent at the time they were changed:

*We want the sponsor or the couple to demonstrate sufficient, independent financial standing, with adequate resources under their own control not somebody else's ... Promises of support from a third party are vulnerable to a change in another person's circumstances or in the sponsor or applicant's relationship with them: that is not the basis for a sustainable system.*<sup>91</sup>

The first reason expresses a preference for a certain model of family life which is by no means universally applicable. Given that the purpose of the financial requirements is to reduce welfare reliance and enhance integration, this does not seem to be a relevant consideration. The second reason fails to recognise that everybody's circumstances are liable to unexpected change. A sponsor may be made redundant or suffer ill health. Parents are often more established financially and own more substantial assets than their young adult children. It is normal for parents and other relatives in the UK to help younger ones out in this way and it seems perverse not to allow this, subject to suitable evidence.

<sup>89</sup> *Review of the Minimum Income Requirement* n.18 above, p.53.

<sup>90</sup> *Ibid* pp.54-55 and 73.

<sup>91</sup> *Statement of Intent* n.21 above, p.20.

In fact, survey respondents and interviewees reported that the financial requirements were forcing them to rely on their parents or adult siblings in ways that would not happen if their partner were with them.

“Thanks to support from my parents I did not have to pay for childcare. I also live with them. Had it not been for their willingness and ability to help I can only assume I would have been dependent on benefits and social housing.”

**Mother, daughter aged 3 years**

In its report, the MAC commented that third party support may be difficult to verify but concluded that ‘in principle, a case can be made for taking other income streams into account, if an operationally feasible way of doing this can be found’.<sup>92</sup> Given its potential significance in helping partners meet the financial requirements, the Government should explore ways in which third party support may be taken into account.

### *5.2.3 There is no reduction in the income threshold if free or low cost accommodation is available*

The financial requirements require the parties to have adequate accommodation available to them after admission, the same rule as applied before the 2012 changes. As this does not need to be a separate unit of accommodation, it will sometimes be provided free of charge by friends or relatives. The MAC reported that 37% of applicants surveyed by the Government were living with friends or family and that, ‘although no data are available on the level of sponsor’s housing costs that applicants report, it could be the case that those that report living with friends and family may be reporting housing costs of zero, or close to zero’.<sup>93</sup> The number of young adults living with their parents has increased dramatically in recent years.<sup>94</sup> One survey showed that, nationally, ten per cent of couples live with one set of parents while a further four per cent live with children and parents.<sup>95</sup> A number of the respondents to the survey were living with parents while some owned their homes outright.

However, where housing costs are low or non-existent, this does not result in a reduction in the income threshold even though it was calculated using a presumed £100 per week for rent. A more flexible approach is desirable which recognises that shared accommodation is a normal part of family life. This may continue indefinitely or a new couple may begin their joint life living with family and, once they are established and both parties are working, move into their own accommodation. Public support cannot be claimed by the migrant partner in any event for five years and the financial criteria will have to be met on two further occasions before indefinite leave is granted.

<sup>92</sup> *Review of the Minimum Income Requirement* n.18 above 52-53.

<sup>93</sup> *Ibid* p.54.

<sup>94</sup> Office for National Statistics *Large increase in 20 to 34-year-olds living with parents since 1996* Press release 21<sup>st</sup> January 2014.

<sup>95</sup> Aviva (2012) *The Aviva Family Finances Report* p.13.

#### 5.2.4 The rules on savings are inflexible and unduly onerous

“The rules are outrageous, I mean it was just absurd. Also they were... they seemed to be almost designed to not help people to who had their own business. It went hugely, hugely against our favour. And then finally I think if you couldn’t show that you had cash in the bank ... and we had over [the threshold amount] in a cash account for five months but it had to be sixty or seventy thousand pounds for six months and we were 21 days short for her to get her visa. So imagine in a family situation like that, it was really, really devastating. It is such an arduous, painful and sickening, and just endless paper work.”

**Father, daughter and son aged 7 years and 9 years**

If a sponsor does not have enough income, the difference may be made up using capital. However, a multiplier of 2.5 applies and there is a threshold of £16,000 before capital can be counted. Thus, a sponsor who has a shortfall of £1,000 pa in income needs to have £18,500 of capital in order to meet the requirements. This must have been held for at least six months at the time of application.

The £16,000 threshold has been explained by reference to the £16,000 cut-off for welfare benefits.<sup>96</sup> However, incoming partners are not eligible for such benefits for five years and the protective benefit of this threshold can only arise if the sponsor’s circumstances change and they have to claim benefits for themselves, which, as discussed below, is more likely if the partner is absent. There is therefore an argument for reducing the £16,000 threshold below which savings are not counted.

There is also the question of how they must be held. Savings must be held in cash in an instant access account as at the date of the application although they may have been transferred from investments, stocks, shares, bonds or trust funds within the period of 6 months prior to the date of application.<sup>97</sup> However, during that six month period, they must have been held only in the name of the sponsor and/or the applicant.<sup>98</sup> The proceeds of property sale are also permitted, provided they represent only the proceeds, after expenses and tax, of the interest held by the sponsor or their partner.

Provided the ownership of assets has been established and they can be accessed with some notice, it seems unduly onerous to require them to be liquidated and placed in an instant access (and therefore low – currently very low - interest) account. The sums involved may be quite considerable. A sponsor with no income, for example, would have to show that they have £62,500 available. It is improbable that the full amount will be required at the time of entry but is an insurance against future need. The rule also creates perverse incentives. Some survey respondents said that they were selling or renting out their home in order to meet the financial requirements. Altogether a more flexible and realistic approach is needed.

<sup>96</sup> *Statement of Intent* n.21 above, p.17.

<sup>97</sup> HC 395, Appendix FM-SE para 11A.

<sup>98</sup> HC 395, Appendix FM-SE para 11, 11A.

“As explained, I am selling my family home, which was left to me by my mum and where I have lived for 24 years. I am lucky to own my home outright so I have enough capital in the property to do this. It will be another upheaval for the kids, but worth it to reunite the family.”

**Mother, three children aged 3 years, 2 years, and 4 months**

“I had to rent out our mortgaged home. I am paying for rented accommodation which is [twice as] expensive as the mortgage!”

**Mother, daughter aged 21 months**

### *5.2.5 The rules for families moving back to the UK are too inflexible*

Families who have been living abroad face particular problems under the financial requirements. As these families are often already well-established family units with children, they are particularly well-represented amongst the survey respondents. Many were seeking to return from countries, such as Australia, Canada, China, Japan, and South Africa where they were doing well, because they saw advantages for their children in terms of developing a British identity, building relationships or for health reasons. In other cases, they were returning to help care for their own elderly parents.

“Well, I mean it was difficult because my parents didn’t really get to see their grandchildren. And you know my mother and father-in-law had a good few years with my daughter and my parents have hardly seen her, so it was many reasons. The other main thing was that I wanted ... my daughter to experience Britain because if she didn’t come to Britain, she would never really be British, she would never understand that side of things... So, to give my parents the chance to see their granddaughter and to give my children the chance to ... grow up and understand English culture.”

**Father, daughter and son aged 3 years and 4 weeks**

If the family is to return together, the sponsor must show that they have earned the income threshold in the overseas country during the previous year. No allowance is made for differences in living standards and wages between other countries and the UK so that even a very good income in a low or middle income country may be less than the income threshold in the UK. The translation of income levels is also subject to the vagaries of the currency exchange rate. In addition, the sponsor is expected to have a job offer and a signed contract of employment to begin within three months of return to the UK which must also meet the income threshold.

It is extremely difficult for sponsors to meet both these conditions. This is the case for all sponsors but particularly when the sponsor has not been the main earner, often due to childcare responsibilities, increasing gender discrimination. Sponsors may also have been working in a voluntary or low paid capacity for charities. It may not have been possible for sponsors to obtain well-paid work in a state of which they are not a national. Some sponsor respondents had not worked abroad because their partner was very well paid. Obtaining work in the UK from abroad at the minimum income threshold is also not straightforward.

In these situations, sponsors have little choice but to come ahead and attempt to obtain suitable employment in the UK. They then have to keep this employment for six months before they can make the application. A significant period of separation from one parent is thus inevitable whether children remain abroad or come home with the sponsor.

### 5.2.6 *The evidential requirements are too demanding*

“We were terrified. I mean it’s needless to say the problem is that it’s only a tick-box exercise, but if we get one thing wrong, they find it and they just dismiss [the application].”  
**Father, son aged 10 years**

Appendix FM-SE sets out the evidential requirements for applicants. These are detailed, prescriptive and require applicants to establish their financial position many times over. For example, to show compliance with the income threshold through employment, applicants must provide all the following evidence:

Evidence of employment	Additional information/requirements
Payslips for the requisite period of prior employment ending no more than 28 days before the date of the application.	<p>Must be original formal payslips:</p> <ul style="list-style-type: none"> <li>• Issued by the employer and showing the employer's name; or</li> <li>• Accompanied by a letter from the employer, on the employer's headed paper and signed by a senior official, confirming the payslips are authentic.</li> </ul>
Letter from each employer who issued the payslips	<ul style="list-style-type: none"> <li>• The letter must confirm:</li> <li>• The person's employment and gross annual salary;</li> <li>• The length of their employment;</li> <li>• The period over which they have been or were paid the level of salary relied upon in the application; and</li> <li>• The type of employment (permanent, fixed-term contract or agency).</li> </ul>
The applicant <b>may</b> submit a signed contract of employment or a P60.	<ul style="list-style-type: none"> <li>• If these are not supplied, the decision-maker may grant the application if otherwise satisfied that the requirements have been met or may request that the applicant submit the document(s).</li> </ul>

<p>Personal bank statements corresponding to the same period(s) as the payslips, showing that the salary has been paid into an account in the name of the sponsor or the sponsor and partner jointly.</p>	<p>Bank statements must:</p> <ul style="list-style-type: none"> <li>• Be from a regulated financial institution;</li> <li>• Not be from a financial institution listed in Appendix P;</li> <li>• Be only in the name of the applicant, the sponsor or both;</li> <li>• Cover the period(s) specified</li> <li>• Be on official bank stationery; or electronic bank statements either accompanied by a letter from the bank on headed stationery confirming authenticity or bearing the official stamp of the issuing bank on every page.</li> </ul>
<p>Where the person is a director of a limited company, evidence e.g. Annual Return, that company is not owned (directly or indirectly) by the applicant, the sponsor or family members and fewer than five other persons.</p>	<ul style="list-style-type: none"> <li>• If the company is owned only by family members and five or fewer other persons, all of the following must be supplied instead of the above:</li> <li>• Company Tax Return CT600 for last full financial year and evidence of filing;</li> <li>• Evidence of registration of the Company;</li> <li>• Annual audited accounts for the last full financial year or, if these are not required, unaudited accounts for the last full financial year and an accountant's certificate;</li> <li>• Corporate/business bank statements covering the same 12-month period as the Company Tax Return;</li> <li>• A current Appointment Report from Companies House;</li> <li>• One of: certificate of VAT registration and the VAT return for the last full financial year; proof of ownership or</li> </ul>

	<p>lease of business premises; original proof of registration with HMRC;</p> <ul style="list-style-type: none"> <li>• Payslips and P60 (if issued) covering the same period as the Company Tax Return;</li> <li>• Personal bank statements covering the same 12-month period as the Company Tax Return showing that director's salary was paid into account in name of applicant or of applicant and sponsor.</li> </ul>
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The rules for evidencing other sources of income or savings are as complex and prescriptive. It is easy to see how applications may take many months to prepare yet mistakes can still be made. There is only very limited scope to correct errors after submission of the application. Under paragraph D of Appendix FM-SE, the decision-maker has discretion to ask the applicant to submit a missing or correct document or to accept the application without it. Given the extreme complexity of the requirements and the cost of applications (see the next section), missing documents or minor errors on documents should always be notified and the applicant given a chance to rectify them. Otherwise, a small evidentiary error can result in refusal and loss of the fee which is not reimbursed.

"I don't trust the Home Office since they refused our application .... We were in the local news and on the TV [and] a lot of people contacted me, a lot of people in my situation. I was reading other people's stories ... then it became more shocking. Because to think why people have been refused the visa, it is insane. [If] you are going to pay basically £1,000 for a visa, and you could be refused because you didn't file a copy of a birth certificate ... I think it's better, safer, just don't apply. Just make another plan. I don't trust the Home Office even if I got a legitimate application, you can't trust that you are going to get the visa."

**Father, two children aged 3 years and 4 weeks**

### 5.3 Applications are too expensive

The process of making an application to enter or remain in the UK is extremely expensive, including the initial application which costs £956 for each applicant (including for any dependent children who are not already British citizens or residents). These costs mount up throughout the process to settlement. Fees are substantially more than the cost of administration of applications so that applicants, including those who don't succeed, are contributing to the overall costs of the immigration system.<sup>99</sup> From April 2015 the immigration health surcharge has been introduced;<sup>100</sup> in addition to the application fee, the

<sup>99</sup> Written Statement to Parliament by Mark Harper, Minister for Immigration, 25<sup>th</sup> February 2013.

<sup>100</sup> Australian and New Zealand nationals are exempt as there is a reciprocal arrangement for UK nationals.



applicant must pay a further £600 on application and £500 on visa renewal (i.e. £1100).<sup>101</sup> Without this the application will not be processed.

The table below shows the costs for a partner from entry to settlement who is entering on the five year route to join a spouse and children who are British citizens:

Application/process	When paid	Cost
English language tuition and pre-entry test (A1 speaking and listening)	Before application	Variable
Medical examination plus TB test for some countries	Before application	Variable
Application	On application	£956
Health surcharge	On application	£600
Further leave to remain	2.5 years after entry	£649
Health surcharge	2.5 years after entry	£500
English language tuition and test (B1)	Before applying for indefinite leave to remain (after 5 years)	Variable
Life in the UK test	Before applying for indefinite leave to remain (after 5 years)	Each attempt costs £50; guide costs £12.99
Application for indefinite leave to remain	After five years	£1,500
<b>Total</b>	<b>After five years</b>	<b>£4,267.99 plus costs of language courses, language tests, legal fees, translation of documents and medical examinations</b>

The costs of medical examinations and of taking and passing language and integration tests are not trivial even though they have not been quantified. The Impact Assessment, for example, assessed the language course needed to pass the settlement test as costing between £400 and £2,950 with a central assumption of £1,675.<sup>102</sup> This is on top of the pre-entry course and exam. The total costs for a single applicant to move from application to settlement are therefore likely to exceed £6,000. Partners who are on the ten year route

<sup>101</sup> While the health surcharge is set at £200 per year, it is rounded up for the initial period of leave which is 2 years and 9 months for those receiving entry clearance and 2 years and 6 months for those receiving leave to remain. In both cases, the surcharge is calculated on a period of 3 years, making it £600 instead of £550 or £500.

<sup>102</sup> *Impact Assessment* n.12 above, p.55.

will have to apply for further leave and pay the health surcharge on two further occasions adding £2,298 to the costs and taking them above £8,000.

“They are not looking at the money that you spend, they are just constantly asking more, more, more money and I have got credit card bills sky high ... They just want more and more money out of us.”

**Mother, son aged 4 years**

By way of comparison, the cost in the Netherlands is €230 for the initial visa and the same for renewal. An application for permanent residence costs €153.<sup>103</sup> There is no health charge for new entrants (who will have to take out a basic health insurance). Costs of taking language and integration tests are likely to be comparable but the cost of bringing a partner to live in the Netherlands is much less than in the UK:

Type of visa	Netherlands	United Kingdom
Admission	€230 = £161	£956
Further leave	€230 = £161	£649
Indefinite leave	€153 = £107.10	£1,500
<b>Total</b>	<b>€613 = £429.10</b>	<b>£3,105</b>

Calculated at €1 = £0.70 (Oanda Currency Converter rate on 17<sup>th</sup> July 2015 €1 = £0.6985)

This level of expense is a significant hurdle for those on modest incomes who are also attempting to meet the income threshold. As an application represents a considerable investment, it is likely that applicants will take care in making them and will not do so unless they believe that they meet all the requirements of the Rules. Table 2 of Appendix F shows that the overall refusal rate for partner applications in the period 2012 to 2014 was 26.9%. In addition, several survey respondents said that cost inhibited them from making applications as they worried about losing the fee if they failed. This suggests that applicants do not find it easy to understand what is expected of them and the application system as a whole is over-complex. Applicants have to pay a large sum of money but are unable to predict with any degree of certainty whether their application will succeed.

“I started looking into it and at the time the visa fee was £865. And I thought to myself wow how can they charge that much for a visa? For me to go to [partner’s country] on a spouse visa and be there for two years is the equivalent of about £25. Since October, it’s kind of been a rolling effect. Now there is the £600 NHS fee that he has got to pay. They have increased the visa from £865 to £956. How can we justify a 10% oh, no it’s actually 11%, an 11% increase how can that be justified? Why don’t we just make it £10,000 and just kick everybody out?”

**Father, daughter aged 2 years**

<sup>103</sup> <https://ind.nl/en/individuals/family/costs-income-requirements/Costs>.

#### **5.4 Applicants who cannot meet the financial requirements are refused visitor visas**

The only way that sponsors who do not currently comply with the financial requirements can meet them (unless they have substantial capital available) is by living and working in the UK for at least six months and often longer. In that situation, family life can be maintained, including between children and the absent parent, only through visits to the UK as the sponsor will find it difficult to take substantial periods of leave. In addition, a sponsor who is about to give birth will often want to do so in the UK close to her own family and advanced medical facilities. The availability of visitor visas to the UK is therefore critical in ensuring that the relationship between the child and the absent parent is able to develop and be sustained.

Several respondents told us that the migrant partner had been refused a visitor visa during the period that they were unable to meet the financial requirements. The usual reason was that it was not believed that the applicant would return after the visit. This was the case even when the migrant had not overstayed previous visas. One respondent told us that her partner had complied with three previous visitor visas but was refused on his fourth application.

“We applied for a visitor visa twice so he could be there for the birth ... [It was] heart-breaking and devastating because I obviously had this perceived idea how the birth would go and he would be there ... And then as I researched more I found out it wasn’t just me, it’s just how it is. And it’s impossible pretty much, it is impossible. [The refusal letter] said that he won’t go home. But they said it in a really rude way and there were lots of spelling mistakes ... it was just like really ridiculous.”

**Mother, son aged 9 months**

“It was devastating, really. Well we found out the day that my son was born because it had taken them so long to get back to us... My mum brought me the refusal letter to the hospital in the afternoon. I mean [my partner] had already missed the birth and that was hard enough because being on my own and going through that. It was just devastating... [My son] just saw [his father] on the screen for six months.”

**Mother, son aged 4 years**

#### **5.5 The financial requirements do not meet their stated aims**

As discussed earlier, the Government’s aims in reforming the family migration system were:

- Reduction of reliance on welfare benefits by families containing a migrant partner once the partner becomes eligible after five years
- Encouraging the integration of migrant partners.

In practice, the financial requirements seem to have had the opposite effect. As section 4 shows, many respondents told us that, due to their childcare responsibilities and the absence of their partner, they have had to claim benefits because either they cannot work at all or they can only work part-time. For them, the route off benefits is for their partner to

be admitted but they are unlikely to meet the financial requirements on their own, a form of catch-22 from which they cannot escape. It is also difficult to see how keeping a family separated or requiring the sponsor to move from their home to find work or to work excessive hours can enhance integration. Indeed, the respondents expressed feelings of alienation from British society as a result.

“I do nothing but work, travel to and from work and sleep. I have no time for a “life”. I am trying to satisfy these insane income requirements to be able to have my ... family life back. My wife and family are my “life”. My wife is my best friend and existing without her is a daily struggle.”

**Father separated from partner and son**

“I set up my own business. Now we are five people working here, five families depend on this business, even it is small... I am trying my best to offer what I can to the community around me. But when I see that the closest people to my heart are not here, really I feel disappointed. When I wake up at night, sometimes I cry alone. And it’s not one year, it’s not two years, no, I count them by minutes and hours. It’s a long time.”

**Father separated from partner and two daughters**

The next sections of this report look in more detail at why the Government has introduced a policy that seems to achieve the opposite of what it set out to do. It looks first at the question of welfare reliance and fiscal benefits and then at integration

#### 5.5.1 *The financial requirements do not reduce reliance on welfare*

“The cost of childcare is nearly my entire pay check so after maternity leave I will not be able to return to work. For the first time in my life I will be depending on benefits to survive.”

**Mother, daughter aged 6 months**

It is understandable that the UK government, like other governments including those discussed in the previous section, wishes to ensure that incoming partners do not create an additional burden on the public purse. However, as this is a concern for all states, it is not clear why the minimum figure, has to be so much higher in the UK than elsewhere, and earned in almost all cases by the sponsor alone, particularly when it is household not individual income which determines eligibility. It should also be recalled that the previous rules required parties to be adequately maintained (equivalent to income support) without recourse to public funds (in addition to those already received by the sponsor).

The £18,600 income threshold was one of a number of suggestions in a report by the Migration Advisory Committee (MAC) published in 2011 in which this committee of economic experts was asked to address the question:

*What should the minimum income threshold be ... to ensure that the sponsor can support [their spouse or partner and dependants] independently without them becoming a burden on the State.*<sup>104</sup>

<sup>104</sup> Review of the Minimum Income Requirement n.18 above p.6.

£18,600 pa was identified as the income at which typically a couple with no children would cease to be eligible for any welfare benefits, including in-work and housing benefits. The MAC advises on the economic aspects of migration and did not address the social or moral implications of their recommendations.<sup>105</sup> In fact, the way in which the question was asked means that the MAC addressed only a narrow range of economic issues that does not reflect the real position of sponsors and their partners. In consequence:

- Although the figure is for a couple, only the income of the sponsor at the time of application is considered in most cases. As already discussed, the potential earnings of the incoming partner are not considered at all even though most migrant partners work. The income threshold applied to the sponsor therefore is much higher than is will be needed in most cases to ensure that the couple will be able to live without reliance on benefits.
- The threshold does not acknowledge how the position of the sponsor may change after the admission of the partner. Where the sponsor has childcare responsibilities, their earning capacity may increase after their partner arrives as these can be shared.
- An income of £18,600 pa is above the level at which a single person is likely to have access to any welfare and anyone who already claims benefits is unlikely to qualify as a sponsor. In fact, as the Impact Assessment acknowledges, single people are more likely than couples or families with children to claim benefits such as income support, jobseeker's allowance, council tax benefit and housing benefit.<sup>106</sup> As these individuals are precluded from acting as sponsor, they will continue to live as single people and will continue to claim benefits. Conversely, if the partner is admitted, the couple is likely to earn over £18,600 pa between them, removing the family unit from benefits altogether.
- The policy has created lone parent families against the wishes of the parties involved. A lone parent is more likely to claim both in-work and out-of-work benefits so one effect of the policy is to increase reliance on benefits. In addition, as lone parents are less likely to find well-paid full-time work than parents who are a couple, their dependence on benefits is entrenched as they may never earn enough to sponsor their partner.
- The probationary period before an incoming partner can receive non-contributory benefits is now five years (as against two years previously) so the migrant will have been self-sufficient for many years before any such eligibility arises.<sup>107</sup> The Government has provided no evidence that sponsored partners, once they become eligible, are more likely than other migrants or the population at large to claim

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<sup>105</sup> *Ibid* p.73. See also presentation by Tim Harrison, Head of the Secretariat of MA, *Causes and consequences of recent changes in family migration policy in the UK* at conference organised by US Department of Homeland Security and OECD in Washington on 18 November 2013: 'The MAC recognised that family migration has legal, social, moral and political dimensions but that **this question was one narrow economics**' (emphasis in original).

<sup>106</sup> *Impact Assessment* n.12 above, p.59.

<sup>107</sup> Non-contributory benefits are those benefits which do not depend on national insurance contributions such as housing benefit or income support; for a list, see HC395 para.6.

benefits. In its Impact Assessment, the Government assumed that, if the changes had not been implemented and the excluded partners had been admitted, the rate of benefits take up after the end of the probationary period would have been the same as for the population as a whole.<sup>108</sup>

“To me it just seems that all these policies the Government are making is like ‘money talks, if you’ve got money you are all right, if you aren’t well it’s tough’. But why should life be like that? I just don’t understand it. This figure has just been being plucked out ... You said there is big study on it but clearly they haven’t talked to families like us.”

**Mother, son aged 4 years**

Given all this, it is puzzling that the Government predicted a welfare saving of £530 million (the central estimate) over 10 years in its Impact Assessment.<sup>109</sup> Close examination of the Impact Assessment shows that almost all the anticipated reduction is accounted for by a predicted decrease in claims for child benefit and child tax credit.<sup>110</sup> In other words, it is not the non-admission of the partner that causes a reduction in benefit claims but either a reduction in the number of children born or the relocation of the family (presumably to a country where child benefit cannot continue to be claimed). As the respondents to the survey discussed in this report have shown, this will not necessarily happen as sponsors continue to live in the UK with their children and attempt to meet the financial requirements. It should also be recalled that it is likely that almost all the children affected in this way are British citizens (as are almost 80% of the children in the survey) and are entitled to live in the UK.

Most of the claimed reductions in benefits therefore arise, if they do arise, because a British citizen child either will not be born or cannot live in the UK. It has nothing to do with the admission of a partner and the benefits in question can be paid to either parent. The Impact Assessment is therefore inaccurate in saying that the 2012 changes would cause a ‘reduction in welfare payments to spouse migrants that no longer qualify to come to the UK (£530 PV million over 10 years)’.<sup>111</sup>

This contradiction between the policy aims and the outcome in practice emerged clearly from the survey and interviews.

“As a single mother living in the UK on a low income I am in receipt of working tax credits and child tax credits. If I was sharing a house with my partner our joint income would exclude me from these benefits and reduce my ‘drain on the public purse’. Financial support from public funds would not be necessary if I were not a single mother.”

**Mother, son aged 8 years**

Many parents stated that they had become dependent on benefits because they were now the sole carer of young children in the UK. Many parents found that, without the support of

<sup>108</sup> *Impact Assessment* n.12 above p.59.

<sup>109</sup> *Ibid* p.3.

<sup>110</sup> *Ibid* p.59, Table A5.6. In families where there are no children, the Impact Assessment shows that the refusal to admit foreign partners is likely to increase welfare reliance by a considerable margin.

<sup>111</sup> *Ibid* p.3.

their partner, the cost of childcare would wipe out much of what they earn if they returned to work.

“On one income we are struggling greatly. I have been on state benefits due to having difficulty holding a job for childcare reasons. I have no family support so rely on professional childcare which is costly.”

**Mother, two sons aged 12 years and 2 years**

Childcare is very expensive when paid from a single salary. Without the support of their partner to help with childcare, non-working respondents mentioned feeling trapped in a situation with no way out. These respondents overwhelmingly felt that they would not have to rely on welfare if their partner could join them in the UK, as this would allow for childcare to be shared as well as an additional income.

“I can only work part-time, as I need to be able to do school runs at the beginning and end of each day. I don’t feel able to use childcare as my children’s lives have been through enough upheaval already with the move and their Dad. So I am on a low wage and claiming benefits. I wouldn’t need to claim benefits if my husband was here – we could both work, one of us full-time, and earn plenty to live off.”

**Mother, two children aged 6 years and 9 years**

### 5.5.2 *The fiscal benefits of the financial requirements were overstated in the Impact Assessment*

The reduction in the welfare bill is only one of the savings anticipated in the Impact Assessment. Overall, the claim is that substantial savings to the public purse will result because migrant partners will no longer use public services (including welfare) as they will not now be admitted and this sum exceeds the tax revenue that is foregone as a result of them not working in the UK. The estimate is that there will be a net gain over ten years of £700 million, of which £660 million is attributed to the financial requirements.<sup>112</sup> In making this claim, the Government says that it has followed the recommendations of the MAC in a 2012 report on how the costs and benefits of migration should be represented in Impact Assessments.<sup>113</sup> However, it has done so only selectively. It has excluded the gross lost wages of migrants, as the MAC recommended, but has included the cost of providing public services to migrants, which the MAC recommended should also be excluded.<sup>114</sup> The consequence is an unbalanced picture in which the fiscal benefits of the policy appear to be much greater than they otherwise would be had the Government followed the MAC’s recommended approach consistently.

The presentation of the welfare savings and of the overall fiscal benefits therefore appears to have been distorted to make it appear that they are both larger and more significant than they really are. There has been no explanation of why this approach was adopted but it

<sup>112</sup> *Ibid* pp.5, 23.

<sup>113</sup> Migration Advisory Committee *Analysis of the Impacts of Migration* January 2012.

<sup>114</sup> *Ibid* pp.12, 99.

undermines a key claim made by government in support of the financial requirements that, despite the hardship they are causing, they are necessary to reduce the costs of migrant reliance on benefits and public services.

### 5.5.3 *There is no evidence that the financial requirements enhance integration*

The other argument made by the Government in support of the financial requirements is that, by ensuring that families have an adequate standard of living, migrant partners are better able to integrate effectively into the UK.<sup>115</sup> However, the Government has not put forward any evidence that the income threshold is necessary for or even aids integration. Furthermore, in its analysis, the MAC could not quantify a level of income necessary for successful integration.<sup>116</sup> This is unsurprising as integration is a complex, multi-dimensional concept, there is no reliable evidence showing a general absence of integration by migrant partners or tying successful integration to a particular level of household income. Quite the reverse, it has been found that a higher income threshold does not promote integration and that income requirements higher than social assistance or the minimum wage are not necessary to promote equal outcomes for immigrants and nationals.<sup>117</sup>

In fact, the financial requirements are viewed as a barrier to integration:

*UK now has the least 'family-friendly' immigration policy in the developed world, with restrictive definitions, requirements and rights causing delays and potentially major negative effects on the integration of reuniting children and spouses.*<sup>118</sup>

The exclusion of a foreign partner, while the sponsor attempts to meet the criteria, delays rather than advances that partner's integration into British society as that cannot begin until they are in the UK. The effect on sponsors should also not be overlooked. The need to meet the financial requirements has led to sponsors working extremely long hours, selling their homes, moving to a different region to find better paid work, dividing their life between two countries or suffering depression or anxiety, all of which are likely to reduce rather than enhance the sponsor's ability to function as an integrated and engaged member of British society. It also increases feelings of alienation and a sense that life is on hold. The overall outcome is not the increased integration of the partner but the decreased integration or ability of the sponsor to participate in the everyday life in their community. This conclusion is supported by a comparative European study of family reunification and integration which found that barriers to admission have a negative impact on integration as the family must spend resources on maintaining family life across borders (running two households, airfares etc.) so that there was less to spend on housing, education or simply social participation.<sup>119</sup>

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<sup>115</sup> *Family Migration Consultation* n.12 above, p. 22; *Statement of Intent* n.21 above, p.16.

<sup>116</sup> *Review of the Minimum Income Requirement* n.18 above, p.6.

<sup>117</sup> Huddleston, T. *Can't Buy Me Love* MIPEX 2011, pp.2-3; Migration Policy Group (2011) *Right to Family Reunion: the Dynamics between EU Law and National Policy Change* MPG briefings for Green Paper on Family Reunion #2, Appendix 1.

<sup>118</sup> MIPEX n.1

<sup>119</sup> A British respondent in this study stated "it was a huge commitment... we have spent so much money to be here... I'm almost integrated but not yet because I don't have [enough] money or stable income. That makes me stay at home a lot. I don't go out and socialise because I don't want to spend money' Strik, T, de Hart, B. and Nissen, E. (2013). *Family Reunification. A barrier or facilitator of integration. A comparative study*. Dublin: Immigration Council of Ireland, p.103



It is also not clear what integration represents in a context where family migrants are joining those born in the UK, who have been through the educational system and have established friends and families and roots in their local communities. 72% of the sponsors in the sample were British citizens born in the UK. They are already well placed to facilitate the integration of their partner into British society and it is not clear what the financial requirements add when no evidence has been presented to show that the very high income threshold is necessary for integration.

“They said they want to make sure that the foreign partner would integrate in the British society. As far as I am concerned, if my wife has got British children and a British husband, she already is integrated in the British society ... You cannot say to someone who is so deeply integrated into British society that she has got children, you cannot say to that person, do not come in here. She is already integrated. Already.”

**Father, daughter aged 3 years and son aged 4 weeks**

## **5.6 Conclusion**

This section has looked at the reasons why the financial requirements have caused such problems for families with children. It shows that the income threshold has been set very high; it appears to be the highest in the world in relative terms and the second highest in absolute terms. The gap between the UK financial requirements and those elsewhere is significant. The section goes on to show that the very high threshold is not the only problem; it is also very rigidly applied. The report identifies as additional difficulties: the exclusion of the partner’s potential earnings and of third party support, the failure to take free or low cost accommodation into account, the rigid rules on holding savings, and the rules for families moving back to the UK from abroad. In addition, making an application is very expensive. All of these factors apply to all applicants but, for families with children who need to make arrangements for childcare, they are particularly onerous while their possibilities for manoeuvre are also more limited.

The section then went on to show that the stated aims of the financial requirements have not been fulfilled. In particular, an examination of the Impact Assessment demonstrates that, despite government claims, the requirements do not reduce the likelihood of migrant partners relying on welfare benefits while the fiscal benefits have been significantly overstated. Finally, the report argues that there is no evidence that the requirements will enhance integration; in fact, the reverse is more likely.

## 6. Legal context

“It is simply not tenable to suggest that children, a six year old and a two year old could possibly maintain a parental relationship with a father or mother for that matter simply by the odd visit or by modern means of communication such as Skype, emails or telephone calls.

Contact such as this is wholly inconsistent in any normal family situation with the principles of Section 1 of the Children’s Act 1989 applying the Welfare Checklist. Such a lack of contact with a natural father, in the absence of any other reason harmful to the children, is wholly inconsistent with their emotional well-being. Whilst this is not the determinant factor, it is a primary factor to consider the effect of the continued separation on the Appellant and the impact it has on his children.”

**Immigration Tribunal Judge Peter Herbert OBE Feb 2014**

This section looks at the national and international legal obligations on the Government and decision-makers when making decisions that affect children. The UK has ratified the United Nations Convention on the Rights of the Child (CRC), which, under Article 3, requires the best interests of children to be a primary consideration in all actions taken by authorities (the best interests principle).<sup>120</sup> Until 18<sup>th</sup> November 2008, the UK government had maintained a reservation to the CRC in respect of children subject to immigration control. This meant that the CRC did not apply to certain foreign national children with respect to immigration. With the lifting of the reservation, the way was paved for section 55 (s.55) of the Borders, Citizenship and Immigration Act 2009 (UK Borders Act) which creates a mandatory duty on immigration officials and others to safeguard and promote the welfare of all children in the UK as they carry out their functions. Although s.55 itself limits the duty to children within the UK, accompanying statutory guidance makes clear that the ‘spirit of the legislation’ should apply in entry clearance decisions. Article 8 of the European Convention on Human Rights (ECHR) also requires that the family’s rights as a unit, which includes the best interests principle, are taken into account and this applies to all decisions including entry clearance decisions. Furthermore, the CRC applies to children affected by decisions of immigration officials pertaining to their entry into the UK.

As was stated in the case of *Mundeba*,

“An entry clearance decision for the admission of a child under 18 is ‘an action concerning children...undertaken by...administrative authorities’ and so by Article 3 “the best interests of the child shall be a primary consideration”.<sup>121</sup>

A number of applicants applying for leave to enter as a partner will have dependent non-British children with them who will also be affected by the decision.<sup>122</sup> The duty to consider their best interests is a primary consideration under Article 3 of the CRC.

<sup>120</sup> The Convention refers to actions undertaken by ‘public or private social welfare intuitions, courts of law, administrative authorities or legislative bodies’.

<sup>121</sup> *Mundeba* [2013] UKUT 00088 (IAC) headnote.

<sup>122</sup> 6% of survey respondents had non-British children

This section also analyses the Immigration Rules and exceptional and compassionate circumstances which allow a grant of leave to enter or remain as a partner outside the Rules and considers whether they meet the best interests principle. Furthermore, it looks at decision-making to ascertain whether the duty to safeguard the best interests of children is being upheld by decision makers. It shows that the Immigration Rules do not adequately reflect the Government's obligations under CRC, s.55 of the UK Borders Act and Article 8. Guidance to decision makers on when parents should be admitted outside the Rules is also inadequate. Finally, decision makers do not give adequate consideration to the best interests of children or do so in a cursory or formulaic way with very little substantive analysis.

### **6.1 The Convention on the Rights of the Child**

“There’s no one really in my situation. In my old school, one of my old friends, her dad is dead, she has a stepdad, but I can’t think of any others. Oh, this other friend I used to have... It would be really, really horrible, it would be almost offensive when she would say, “Oh, I don’t get to see my dad, I only get to see my dad every other week”. You haven’t seen your dad for two weeks? At least you haven’t not seen your dad for two years! I have not seen my dad for two years. How do you think I feel? I didn’t say it to her though.”

**Boy aged 12 years**

On 19<sup>th</sup> April 1990, the UK signed the United Nations Convention on the Rights of the Child (CRC) which grants a range of rights to all children and young people under the age of 18. The UK ratified the CRC on 16<sup>th</sup> December 1991 and it came into force on 15<sup>th</sup> January 1992. Since the reservation pertaining to foreign children under immigration control was lifted on 18<sup>th</sup> November 2008, all children in the UK should benefit from the rights under the CRC. Whilst the CRC is not directly enforceable in domestic law, the Government must adhere to its principles.

Article 3 of the CRC requires the best interests of the child to be a primary consideration in all actions concerning children (‘the best interests principle’). It is translated into domestic law through s.55 of the UK Borders Act.<sup>123</sup> It must also form part of any decision made under Article 8 of the ECHR (the right to respect for private and family life, discussed further below) by which the Government, decision makers and courts are bound.<sup>124</sup>

In the landmark case *ZH (Tanzania) v Secretary of State for the Home Department*, the UK Supreme Court considered the best interests principle in the context of Article 8 ECHR. Lady Hale held that:

<sup>123</sup> S.55 does not reflect the precise wording of the CRC but there is consensus that it embodies and is commensurate with the obligations in Article 3 of the CRC.

<sup>124</sup> *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4; *Nunez v Norway* 55597/09 [2011] ECHR 1047 (28 June 2011).

...it is clear from the recent jurisprudence that the Strasbourg Court will expect national authorities to apply article 3(1) of CRC and treat the best interests of a child as 'a primary consideration'.<sup>125</sup>

She further stressed that best interests 'must be considered first' before going on to consider what other factors, cumulatively, might act as countervailing considerations, for example the need to maintain firm and fair immigration control.

Lord Kerr in the same case added,

...the primacy of this consideration needs to be made clear in emphatic terms. What is determined to be in a child's best interests should customarily dictate the outcome ... and it will require considerations of substantial moment to permit a different result.<sup>126</sup>

The recent Supreme Court judgment in the case *SG*<sup>127</sup> highlights that paragraph 6 of General Comment 14 issued by the UN Committee on the Rights of the Child<sup>128</sup> is the most authoritative guidance now available on the effect of article 3(1).

General Comment 14 states that the best interests of the child is a 'three-fold concept':

- (a) a substantive right,
- (b) a fundamental, interpretive legal principle and
- (c) a rule of procedure.<sup>129</sup>

The Court cites later paragraphs of the General Comment explaining that:

"... actions concerning children is to be read in a 'very broad sense' ... that where a decision will have a major impact on children 'a greater level of protection and detailed procedures to consider their best interests (are) appropriate (para 20)'; and that the child's interests have high priority and (are) not just one of several considerations ... larger weight must be attached to what serves the child best."<sup>130</sup> (emphasis added)

Thus, immigration decisions which concern children even if they are not the subject of the decision, such as the admission of a parent, should be governed by the best interests principle. The Supreme Court case of *Zoumbas*<sup>131</sup> summarises the duty upon decision makers, reiterating that the best interests of a child must be a primary consideration and adding that, although it is not a trump card, other considerations cannot be treated as

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<sup>125</sup> *ZH (Tanzania) v SSHD*, para 25. The European Court of Human Rights, which considers state violations of the European Convention of Human Rights, translated into domestic UK law by the Human Rights Act 1998, is in Strasbourg and is often referred to as 'the Strasbourg Court'.

<sup>126</sup> *ZH (Tanzania)* para 46.

<sup>127</sup> *SG & Ors, R (on the application of) v Secretary of State for Work and Pensions (SSWP)* [2015] UKSC 16

<sup>128</sup> Committee on the Rights of the Children *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) CRC/C/GC/14 29<sup>th</sup> May 2013.*

<sup>129</sup> See Appendix G for the full text

<sup>130</sup> *Ibid* para 107

<sup>131</sup> *Zoumbas v SSHD* [2013] UKSC 74 [10] per Lord Hodge.

inherently more significant. Decision makers must ask the right questions in an orderly manner to ensure necessary weight is given to the child's interests, particularly when there are other important considerations, and there is no substitute for a careful examination of all relevant factors. A child must not be blamed for matters for which he or she is not responsible, such as the conduct of the parent.

"The child does not understand the laws. He thinks he's a bad kid."

**Father, son aged 5 years**

The main articles of the CRC are set out in Appendix G. Apart from Article 3, the other key articles are Article 2 (non-discrimination), Article 4 (protection of rights), Article 9 (separation from parents), Article 10, (positive, humane and expeditious decisions on family reunification) and Article 12, (child's opinion).

Rules that discriminate against children from less affluent backgrounds or from certain ethnicities or nationalities are likely to breach Article 2 (non-discrimination). Under Article 4 (protection of rights), governments have a responsibility to take all available measures to make sure children's rights are respected, protected and fulfilled. When countries ratify the CRC, they agree to review their laws relating to children. Governments are obliged to take all necessary steps to ensure that the minimum standards set by the CRC are being met. Implementing laws that detrimentally affect children from a migrant background in the interest of immigration control does not protect the rights of those children and may breach the CRC.

Article 9 (separation from parents) is of fundamental importance in family migration cases where children are separated from a parent due to the financial requirements. As the evidence from the respondents to this report demonstrates, children are routinely separated from parents against their wishes with significant detriment to their well-being. The detriment to children caused by separation from a parent is confirmed by child attachment theory.

"My youngest daughter doesn't seem to know who I am."

**Father, two daughters aged 3 months and 2 years**

"I used to think that daddy lived in the phone ... And then my mum said you know he doesn't live in the phone, he lives in America. It was kind of sad because I always thought that he was close to me because he lived in the phone. And then I realised, I thought, oh, my god, my father is not directly next to my ear, he is 3,000 miles away. He is 3,000 miles away on a completely different continent. Oh my god, this is horrible."

**10 year old child separated from father**

Article 10 requires 'Positive, Humane and Expeditious Decisions on Family Reunification'. Ensuring family reunification is a positive obligation on states and should be the norm. Rules which prevent this happening should have a clear and well-evidenced policy justification which, as this report has shown, is not the case for the financial requirements which have caused thousands of children to be separated from a parent for months and often years. In

many cases, the family cannot see how they can be reunited in the foreseeable future as they are unlikely ever to meet the income threshold.

An initial decision on a partner visa application can take several months.<sup>132</sup> An appeal against refusal can easily take a further six months to a year. When appeals are successful (which those involving children often are; see below), decision makers can take anywhere between several weeks to several months to issue a visa. It is not uncommon for those who have lawyers to be forced to commence judicial review proceedings to challenge the delay.<sup>133</sup> This results in further delay and costs for the applicant. It can easily take up to two years in total to exercise rights which should have been granted in the first place.

“It’s so stressful, and worries are on your mind all the time, ‘what is going to happen?’, because you don’t how long these cases take to come to court. There is no guideline you just... you are just subject to this legal process which you are not an expert on and you are just relying on other people, decisions that can either wreck a family’s life or improve it. We just don’t know what is going to happen. It is that unknown that is so frightening.”

**Mother, son aged 4 years**

A refusal can result in devastating separation for an indefinite period of time while the UK sponsor tries to meet the financial requirements or proceeds to appeal the refusal. Sponsors must show they have met the income threshold for at least six months before they can even start the application process. For some, the separation may never end and the child’s predicament is compounded as the applicant is unlikely to secure a visit visa.

The evidence that has emerged during the course of this report is not of positive or expeditious family reunification.

“He hasn’t even met his daughter. I gave birth alone. He sends her a goodnight message every night even though she is just a baby, so she knows his voice. He has only ever seen her on Skype and it breaks my heart. All I want is for him to be here with us. I am not saying I will not go out and work but there is no way I can ever earn over £18,600. This will never happen. They have to give us a realistic chance.”

**Mother living in the north of England, daughter aged 5 months**

Article 12 (child’s opinion): The current application process has no scope for obtaining the child’s view. Decision makers do not consider what children think or feel, although their opinion where appropriate should be taken into account. Children are currently invisible in the application of the Rules.

« I don’t think people should have to move to another country to be together. I think people should come and have one big house.”

**10 year old boy**

<sup>132</sup> Home Office states that processing times for all settlement visas (partner visa applications fall within this category) are being decided within 60 days.

<sup>133</sup> Judicial review proceedings are the only way administrative delay can be challenged. It is a costly and specialised procedure and not an option available to many.

“I want to live here, with my parents, my dad and my mum” [Child on the verge of tears].”  
**10 year old boy separated from his mother**

“They watch the news every day, so they come and tell me ‘mummy this is happening in the UK government, this is what they said about immigration’. And something they said really stressed my oldest son, he said, 'how dare they put a price on love? That’s discrimination', and I said it’s true. It is true, how can you tell somebody how much money you need in your account before you can legitimately say yes, that’s your spouse? It’s not fair. And for an eleven year old to say that, why can’t the Government see that?”

**Mother, three children aged 11 years, 10 years and 6 months**

## **6.2 Section 55 Borders Citizenship and Immigration Act 2009**

Section 55 (s.55) of the Borders, Immigration and Citizenship Act 2009 (the UK Borders Act) requires the Secretary of State to ensure that immigration and nationality functions are ‘discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom’. This duty must be fulfilled having regard to its accompanying guidance, *Every Child Matters*, (the Guidance), and if decision makers depart from it, they must have clear reasons for doing so.<sup>134</sup> The Guidance sets out a number of key principles including the best interests principle, and reiterates that all children in the UK are covered by the duty, including those who are not British citizens. It reminds decision makers to consult the wishes and feelings of children where practicable as well as ensuring that applications are dealt with in a timely way, which minimises the uncertainty children may experience.<sup>135</sup> Thus the Guidance mirrors the CRC, but its content is not reflected in the latest Immigration Directorate Instructions (IDIs) on family migration cases. The IDIs provide detailed instructions for decision makers on factors to consider when making a decision to grant leave and provide specific guidance on the best interests principle. The Guidance on s.55 should be reflected in the IDIs.

The survey carried out for this report suggests that the majority of the children affected by refusals under the financial requirements are in the UK and therefore they should be protected directly by the s.55 duty. However, the protection should also apply to children abroad who will be affected by an immigration decision. The survey for this report shows 120 out of 150 children (80%) are British citizens and 17 British citizen children are living abroad with one parent. The Guidance clearly specifies that entry clearance officials must have training on the importance of having regard to the welfare of children, embracing the ‘spirit of the legislation’, even if it does not directly apply to children outside the UK.<sup>136</sup> This position was reflected in the Immigration Directorate Instructions (IDIs) until recently.<sup>137</sup> Indeed, in the case of *Mundeba*, the Court explicitly referred to the Guidance and IDIs and said:

<sup>134</sup> *Every Child Matters Change for Children: Statutory Guidance to the UKBA*, November 2009

<sup>135</sup> This must also apply to decisions where children are directly impacted or are cited as dependents.

<sup>136</sup> *Every Child Matters* n.134 above, p.20.

<sup>137</sup> *Ibid.* Footnote 2

“Although the statutory duty under s.55 UK Borders Act 2009 only applies to children within the UK, the broader duty doubtless explains why the Secretary of State’s IDI invites Entry Clearance Officers to consider the statutory guidance issued under s.55”.<sup>138</sup>

Given that the best interests principle in Article 3 CRC applies to **all** children affected by a country’s laws and this is reflected in the s.55 Guidance, it is hard to understand why the current IDIs now depart from the Guidance. This makes a proper best interest assessment more difficult for decision makers following instructions in the IDIs and dilutes the requirement on entry clearance officers to embrace the spirit of the legislation.

### **6.3 Article 8 European Convention on Human Rights**

The Human Rights Act 1998 incorporates into domestic law the European Convention on Human Rights (ECHR). Article 8 ECHR (Article 8) is the right to family and private life.<sup>139</sup> Compliance with Article 8 requires application of the best interests principle. Like s.55 UK Borders Act, Article 8 is part of the UK’s domestic law and must be adhered to by policy and decision makers and is directly enforceable by tribunals and courts.

There is a long line of jurisprudence from our domestic courts and the European Court of Human Rights on the correct interpretation and application of Article 8.<sup>140</sup> Immigration control often interferes with family life but the right to family (or private life) is not an absolute right and immigration control can be a justified interference. However, interference must be proportionate and Article 8 requires a balancing act between the family’s right and the public interest in controlling immigration.

The Immigration Act 2014 (the ‘Act’) sets out in primary legislation the public interest considerations to which a court or tribunal must ‘give due weight’ when undertaking an Article 8 assessment. Section 19 of the Act states that these are: the importance of effective immigration controls; the benefits of being able to speak English; and financial independence. The policy justification is that people who speak English and are financially independent are less of a burden on the taxpayer and better able to integrate into society.

The Act recognises that the public interest does not require removal of a person (where criminality is not an issue) if there is a genuine and subsisting parental relationship with a child who is a British citizen or has lived in the UK continuously for seven years and it would not be reasonable to expect the child to leave the United Kingdom.<sup>141</sup> The same wording can be found in the Immigration Rules (the ‘Rules’) in paragraph EX.1 (a) of Appendix FM.<sup>142</sup> EX.1 is an exception to the Rules and applies in certain circumstances including where the financial requirements cannot be met by the applicant. The next section considers whether EX.1 is a sufficient and appropriate way to safeguard the best interests of children.

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<sup>138</sup> *Mundeba* (s.55 and para 297(i)(f)) [2013] UKUT 88(IAC)

<sup>139</sup> See Appendix G for the full wording of Article 8.

<sup>140</sup> See *Razgar v SSHD* [2004] UKHL 27 which is still the starting point for analysing Article 8 cases and sets out the five stage approach that must be used.

<sup>141</sup> See s.117(b)(6) Immigration Act 2014.

<sup>142</sup> HC 395 Appendix FM.



“What you are doing is wrong, destroying families. I can get why they may want to do this but it’s like a very small minority who were abusing the system, a very small minority and there are other ways to tackle it but this is definitely not the right way. You have just taken away my human rights.”

**Mother, son aged 9 months**

#### **6.4 How do the Immigration Rules implement the Duty to Children?**

There are three levels at which the Immigration Rules and Immigration Directorate Instructions (IDIs) are designed to implement the best interests principle:

- the Rules themselves
- the exception EX.1 within the Rules
- Outside the Rules where there are exceptional or compassionate circumstances.

The applicant’s location and immigration status are relevant to whether an application can be made at all and whether successful applicants must live in the UK for five years before achieving permanent settlement (‘five year route’) or for ten years (‘ten year route’):

<b>Position of applicant</b>	In-country with long-term immigration status e.g. Tier 2 worker, student (or short-term leave as fiancée/ proposed civil partner )	In-country with short-term immigration status e.g. visitor	In-country with no immigration status e.g. overstayer, failed asylum seeker	Out of country
<b>Applicant meets the financial requirements</b>	Application may be made; five year route	Application cannot be made	Application cannot be made	Application may be made; five year route
<b>Applicant meets conditions of paragraph EX.1</b>	Application may be made (if applicant does not meet financial requirements); ten year route	Paragraph EX.1 cannot apply	Application may be made; ten year route	Paragraph EX.1 cannot apply

<b>Applicant meets neither financial requirements nor paragraph EX.1</b>	Exceptional or compassionate cases may be granted leave outside the rules; ten year route	Exceptional or compassionate cases may be granted leave outside the rules; ten year route	Exceptional or compassionate cases may be granted leave outside the rules; ten year route	Exceptional or compassionate cases may be granted leave outside the rules; ten year route
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#### 6.4.1 *The Immigration Rules and the best interests principle*

The Government maintains that the Rules take sufficient account of the needs of children and comply with the best interests principle under s.55 UK Borders Act and Article 8. The body of the Rules spell out the relationship, suitability, immigration status requirements and financial requirements an applicant must meet in order to satisfy the Rules and be granted leave to enter or remain in the UK as a partner. Any case where any or all these requirements are not met is treated as an exception and is decided either under paragraph EX.1 or as an exceptional case outside the Rules. Cases decided outside of the rules are determined according to the instructions in the Immigration Directorate Instructions (IDIs).<sup>143</sup>

The Government states that immigration control and financial independence are in the public interest, and this is now recognised by section 19 Immigration Act 2014, and therefore the Rules strike the right balance on Article 8. This report has demonstrated that the financial requirements, both the very high income threshold and the rigidity with which the requirements are applied, go further than necessary to meet their stated aims and prevent families from living together in the UK irrespective of the impact on children. Their negative impact on children has been fully explored in section 4 of this report and the financial requirements cannot be said to properly reflect the best interests principle. As a result, it is arguable that the Rules as drafted breach the Government’s legal obligations. Although EX.1 tries to mitigate the negative impact upon children it only applies to certain groups of children within the UK while the best interests principle applies to **all** children affected by immigration decisions.

#### 6.4.2 *In-country applications: Paragraph EX.1 and best interests*

Paragraph EX.1 provides an exception to those who cannot meet the financial requirements, the English language requirements or certain immigration status requirements of the Immigration Rules. It is not however an exception to the entire Rule and an applicant still needs to meet the relationship, suitability and immigration status requirements (see table in 6.4 above). It covers an applicant who:

<sup>143</sup> The most recent guidance in relation to family migration on Article 8 is *Appendix FM 1.0 Family Life (as a Partner or Parent) and Private Life: 10-Year Routes* April 2015.

- Has a genuine and subsisting parental relationship with a UK-based child who is either a British Citizen or has lived in the UK continuously for at least the preceding seven years and it would not be reasonable to expect the child to leave the UK; or
- Has a genuine and subsisting relationship with a UK partner who is a British Citizen, settled in the UK or a refugee/recipient of humanitarian protection, and there are insurmountable obstacles (as defined in paragraph EX.2) to family life with that partner continuing outside the UK.

The Government's position is that the criteria in EX.1 (a) (combined with the rest of the Rules and the Immigration Directorate Instructions) reflect the Government's<sup>55</sup> duty, as interpreted in recent case law,<sup>144</sup> and therefore it is an adequate safeguard for children in the UK. While paragraph EX.1(a) apparently offers a wide ranging exception to the parents of children in the UK, as the table above shows, it only applies to those who apply from within the UK and are not on a visit visa. Children in the UK whose parents are abroad are not covered by the protection of EX.1 and neither are children whose parents are in the UK as visitors.

In the case of non-British citizen children, only children who have lived in the UK continuously for seven years are protected. Thus, a child below seven years of age automatically does not qualify under the exception. It is hard to reconcile mandatory refusal of leave under the Rules to a parent of a child aged six who has lived in the UK for all his or her life with the 'best interests' principle.<sup>145</sup> A child who has lived in the UK for longer than seven years but with breaks (for example if the family moved abroad from time to time) would not qualify for the protection offered by EX.1(a).

Having established whether a child falls within EX.1(a), decision makers are required to consider whether it would be reasonable for that child to live in a different country and factors such as risks to a child's health, wider family considerations, ability to integrate abroad, country specific information and whether there are any specific factors raised by the child must all be considered. In particular it should be considered whether the child will be leaving the UK with parent(s). On this, the IDIs say: 'It is generally the case that it is in the child's best interest to remain with their parent(s)'.<sup>146</sup> This is in striking contrast to the position when applicants are not in the UK which is discussed in 6.5.6 below.

Paragraph EX.1 (b) is about the difficulty a partner would have in continuing family life abroad. Paragraph EX.2 defines 'insurmountable obstacles' as 'very significant difficulties ... which could not be overcome or would entail very serious hardship for the applicant or their partner'.<sup>147</sup> The exception does not refer to children directly and the 'insurmountable obstacles' threshold is very high. It may apply in a few cases in which paragraph EX.1(a) does

<sup>144</sup> In particular, *ZH (Tanzania)* (see fn.124 ) and the Court of Justice of the European Union decision in *Zambrano v Onem* Case C-34/09 8<sup>th</sup> March 2011 where the Court held that a decision to refuse a non-EU parent leave which forces the EU citizen child to leave the EU is unlawful. Although *Zambrano* was not directly concerned with s.55 the judgment has been incorporated into domestic law via EX.1.

<sup>145</sup> It also does not meet the government's obligations in EU law under *Zambrano* (see previous footnote).

<sup>146</sup> IDI fn. 143 above, p.56.

<sup>147</sup> *Ibid* p,23

not apply but only very rarely and it is not considered further in this section which is concerned with whether paragraph EX.1(a) adequately protects the interests of children.

#### 6.4.2.1 EX.1 and immigration status

Paragraph EX.1 only applies to those who are already in the country at the time of making the leave to remain application. The individual must be the partner of the British sponsor and must meet the suitability criteria<sup>148</sup> as well as having the appropriate immigration status (or lack of status) as outlined in the table above. Visitors and those on other visas of six months or less, although here lawfully, are not allowed to make an application under the Rules and are not covered by EX.1. However, those who do not have lawful immigration status in the UK are still protected by EX.1 and can therefore make an application for leave to remain in the UK. The Supreme Court in *ZH Tanzania*<sup>149</sup> makes it clear that, as the best interests of the child are a primary consideration, the child should not suffer due to the immigration status of the parents. Thus it is understandable that the Rules allow an exception to the requirements for lawful immigration status for people with children in the UK. However, when children of parents with irregular status,<sup>150</sup> are given protection it is hard to understand why children whose parents are here on a short term visit visa are not afforded the same protection. If they apply while their visit visa is valid, they cannot benefit from paragraph EX.1. If they breach Immigration Rules and overstay they can benefit. If they comply with their visa and leave the UK to make an entry clearance application they will also lose the protection of EX.1. This anomaly precludes a large number of children in the UK from having their rights protected.<sup>151</sup>

The case study below demonstrates the problem. Had O remained in the UK and overstayed her visa and then made an application she would have benefited from having British citizen children and paragraph EX.1(a) would have applied to her case.

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<sup>148</sup> An applicant can be refused leave on grounds of suitability. The grounds can be found in S-EC of Appendix FM, Immigration Rules. They are wide ranging encompassing criminality to a failure to attend an immigration interview without a reasonable excuse.

<sup>149</sup> *ZH (Tanzania)* fn. 124 above.

<sup>150</sup> Because they are on temporary release or admission or are in breach of immigration laws.

<sup>151</sup> The government's position is that Article 8 applies differently in entry clearance cases than in leave to remain cases, a position which has received some support from the Court of Appeal in *SSHD v SS (Congo)* [2015] EWCA Civ 387. This decision did not consider the government's specific duties towards children and has been criticised for its approach to article 8, including in this respect. An appeal to the Supreme Court is underway. It did find however that the Rules in this area do not, on their own, constitute a complete code for the application of Article 8 so that leave outside the Rules will sometimes be required, although this was anticipated to be a relatively rare event

### **Case Study of O**

N the British citizen lived and worked in China. He spent 12 years there. During that time he fell in love with and married O. They had two children. When the youngest was two, they thought about relocating to the UK both because N's work permit was running out and because he wanted his children to get to know his parents and culture at least for a while. They came to the UK and O was on a visit visa for six months. They decided that they would give life in the UK a go. The children started school and nursery. O left the country before the end of her visa to apply from China to return as a spouse but they were confronted with the financial requirements as N did not earn £18,600. O had never before been away from her children, but they were a law abiding family and O did not overstay her visit visa. She was refused a partner visa because of the financial requirements but she did not benefit from EX.1. It was immaterial that she had two British children who were living in the UK. She was separated from her children and husband for a year whilst N tried to earn the equivalent of £18,600 over a six month period to comply with the Rules before they applied again. The family went through anguish and heartache and the children lost their mother for an entire year.

Given the excessive restrictiveness of the main Immigration Rules, the best interests of children are reduced to an exception within the Rules that is very limited in its application and leaves many families outside its scope. Thus, the s.55 duty is only discharged for a limited number of children.

"We had been advised to overstay our visa, because we get more rights if we overstay. I ended up ringing a London lawyer to get some correct information and he said that we would get prosecuted if we did that."

**Mother, three children aged 12 years, 7 years and 2 years**

#### 6.4.2.2 EX.1 and length of leave to remain

As stated previously, although EX.1 is part of the Rules, it is an exception to some of the requirements of the Rules. This means that applicants who do not meet the main Rules but are granted leave under EX.1 can only settle in the UK after ten years of limited leave (the ten year route), rather than five years which applies to those who have met all the requirements of the Rules.<sup>152</sup> They must therefore renew their leave every 30 months until they reach the ten year mark. Thus, even when EX.1 recognises that it is in the children's best interest to have their migrant parent granted leave to remain with them in the UK, there is inequality in the way these parents treated as the length of time to permanent family reunification is doubled. Ten years is a long time for a family member to live without settled status.<sup>153</sup> The cost also increases as the applicant has to pay a fee each time they apply for a visa extension.

<sup>152</sup> An individual who is granted leave under the Rules will be given limited leave for 30 months which has to be renewed. When they have completed 5 years they can apply for indefinite leave to remain and thereby acquire settled status. They do however, have to continue to meet the Rules at the time of both applications.

<sup>153</sup> A grant of leave under EX.1, which is on the ten year route to permanent settlement, cannot be considered expeditious especially as this length of time to permanent settlement applies to families with children and arguably could fall foul of the duty under Article 10 of the CRC, the obligation on states to ensure expeditious decisions on family reunification.

#### 6.4.3 *In-country applications - Exceptional circumstances and compassionate factors*

If an applicant in the UK does not meet the Rules (including EX.1) then decision makers must in every case consider whether there are exceptional circumstances that warrant a grant of leave outside the Rules under Article 8, which incorporates the best interests principle, or whether there are compassionate factors such as serious ill health which would result in unjustifiably harsh consequences for the applicant or their family but might not constitute a breach of Article 8.

The Immigration Directorate Instructions (IDIs) provide guidance to decision makers on interpreting and applying exceptional circumstances or compassionate factors. The IDIs state that the decision-maker should consider the best interest of the child in determining whether these exist.<sup>154</sup> However, these are narrowly construed with limited examples of what will be accepted as exceptional. Exceptional is defined as circumstances in which refusal would result in unjustifiably harsh consequences for the applicant or their family and thus not be proportionate under Article 8. This test is a much more restrictive interpretation of what Article 8 requires than that set by the European Court of Human Rights and the UK courts.<sup>155</sup> Factors to be taken into account when deciding on whether there are exceptional circumstances include: the best interests of the child; the nature of the family relationships; the immigration status and nationalities of the applicant and family members; length of lawful residence in the UK; and the likely impact of return to the applicant's country of origin.

If the family can live abroad but choose to separate this in itself does not constitute exceptional circumstances. It is clear that the Government considers that families who split up in order to allow the sponsor to meet the financial requirements in the UK are choosing to separate although this is almost always an artificial choice if the family is to have any chance of living in the UK. Although the instructions in the IDIs add that decision makers should not force a family to split (if there is no criminality to add weight to the public interest in removal), they conclude by saying that a grant of leave outside the Rules is likely to be very rare and indeed it is, as demonstrated in the cases we have analysed. None of the applicants surveyed for this report were found by decision makers to have met the exceptionality or compassionate grounds threshold. Leave to remain was not granted under Article 8 or outside it on compassionate grounds.

Despite this, the IDIs state that the guidance given on exceptional circumstances and compassionate factors takes into account relevant law on Article 8 and s.55 in identifying family and private life factors to ensure the Government has met its legal obligations. Decision makers are reminded that the 'public interest' consideration under Article 8 is now underpinned by primary legislation through the Immigration Act 2014 and therefore immigration control, the applicant's ability to speak English and to be financially

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<sup>154</sup> IDI fn.143 above, p.46.

<sup>155</sup> The Strasbourg jurisprudence on this is extensive and complex but see, for example, the recent decision in *Jeunesse v Netherlands* 12738/10 3<sup>rd</sup> October 2014. In the UK jurisprudence, see *Huang v Secretary of State for the Home Department* [2007] UKHL 1; *EB (Kosovo) v Secretary of State for the Home Department* [2008] UKHL 41. While the Court of Appeal in *SS(Congo)* (fn.151 above) found that the Rules and the possibility of leave outside the Rules allow for the application of Article 8 in accordance with the law, it did not consider the guidance in the IDI in any detail and did not consider the position of children and the best interests principle in the IDI at all.

independent must be given ‘great weight’. However, as the analysis of decision letters and appeal determinations later in this section demonstrates, when courts engage with the family’s individual circumstances they almost always conclude that decision makers are not giving sufficient weight to factors in favour of family life and the children’s best interests.

The limited guidance on exceptional circumstances and compassionate factors and the creation of a new threshold of ‘unjustifiably harsh consequences’ for a family are resulting in decisions where the right to family life is being incorrectly denied to children.

#### *6.4.4 Entry clearance applications: Best interests where an applicant is abroad*

If a person is seeking leave to enter the UK as a partner they may be abroad with their entire family. Usually, the family is considering relocation and the British partner wants to return to his or her own country. There are many instances however, when applicants have been in the UK for a short time, usually as a visitor, to give the family a chance to decide whether to relocate to the UK. When that decision is made, the applicant is required by the Immigration Rules to leave their British partner and children in the UK and return abroad to make an entry clearance application. This is usually in the expectation that the application process will not take too long and they do not want to disrupt the daily lives of their children, as demonstrated in O’s case discussed above and by other respondents to the survey. However, as that case also shows, return may be delayed by months or years if there are problems in meeting the financial requirements.

Children who remain in the UK whilst the applicant returns abroad are in a lacuna vis-à-vis the Rules. Their wellbeing is not safeguarded through the exception applicable to parents under EX.1. Critically, EX.1 does not apply in entry clearance cases so that the Rules as drafted do not have any way of addressing the best interests of children who are in the UK but whose parent is applying from abroad. The survey carried out for this report found that the vast majority of children affected by entry clearance decisions are both British and in the UK. However, even if the children are not British, the s.55 UK Borders Act duty applies to all children irrespective of their immigration status as discussed earlier in this section.

In the absence of EX.1, where an applicant does not meet the requirements of the Rules the decision-maker must consider any exceptional circumstances or compassionate factors in order to discharge the Article 8 duty. Thus, when parents apply for entry clearance from abroad the children’s best interests are only specifically considered by way of exceptional circumstances completely outside the Rules.

##### *6.4.4.1 Entry clearance cases: Exceptional circumstances or compassionate factors and best interests*

The only mechanism to look specifically at children’s best interests when their parent is out of the UK is through exceptional circumstances. Exceptional and compassionate factors which will warrant grant of leave in the child’s best interest are very limited.

The Immigration Directorate Instructions (IDIs) require that exceptional circumstances are considered on the basis of Article 8. However, compassionate factors need only be

considered if they are specifically raised by the applicant.<sup>156</sup> As with exceptional circumstances outside the Rules for those who apply from within the UK, the relevant question decision makers have to ask is whether refusal of entry clearance would breach Article 8 because it would result in ‘unjustifiably harsh consequences’ for the applicant and family’.<sup>157</sup> As discussed in the previous section, this test is much narrower than is required by Article 8 or the best interests principle. Furthermore, the IDIs state that the Rules have set out the correct public interest test vis-à-vis Article 8 and therefore any decision to grant leave under Article 8 will be very rare. This is true in practice as none of the applicants surveyed for this report were granted leave on exceptional or compassionate grounds, despite meeting this threshold when their case was reviewed by a court.

Examples are given in the IDIs of what are and are not deemed exceptional circumstances. Again, the fact that refusal may result in continued separation of family members does not itself constitute exceptional circumstances where the family is regarded as having chosen to separate themselves. As has been identified in this report, separation for most families is a choice born out of necessity. For families trying to return to the UK after living abroad, the financial requirements often mandate separation. The British sponsors must have been earning a salary abroad at the UK income threshold (with no discount for lower local wages) and, as discussed in section 5, this is difficult in many countries where earnings are much lower than in the UK. In addition, they must have a secure job offer in the UK that meets the income threshold.<sup>158</sup> Securing a job in the UK whilst abroad can be very difficult. Sponsors often have no choice but to enter the UK alone to secure work and ensure they have been in employment for the required length of time which is at least six months. Therefore, the Rules themselves are forcing separation on sponsors wishing to return to the UK with their families. If they do not want to separate, their only choice is indefinite exile from the UK. However, this is not taken into consideration by the IDI.

Exceptional circumstances are treated very narrowly. Where there is a child in the UK, the IDIs state that the ‘key issue is whether there are any factors involving the child in the UK that can **only** be alleviated by the presence of the applicant in the UK’ (emphasis added). They go on to say that consideration needs to be given to the ‘effective and material contribution’ that the applicant’s presence in the UK would make to safeguarding and promoting the welfare of the child. This contribution needs to be of a significant kind:

1.1 Support during a major medical procedure, particularly if this is unforeseen or likely to lead a permanent change in a child’s life.

1.2 Simply being present for exams is not sufficient unless particular support is to be provided by the applicant which other family members cannot meet.

1.3 Parents choosing to travel at different times to the UK will not itself amount to a degree of separation that amounts to exceptional circumstances. Nor will a clear pattern of maintaining lifestyles in two different countries which has been become unviable solely through a change in economic circumstances.

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<sup>156</sup> Appendix FM 1.0 10 year routes p.51

<sup>157</sup> Appendix FM 1.0 Family Life (as a Partner or Parent) p 49-52

<sup>158</sup> This would only not apply if the British sponsor was very wealthy (with at least £62,500 in cash savings).



1.4 The risk of an irrecoverable breakdown of a parental bond with a young child because the impact of natural disaster on the overseas parent's housing or employment makes it impossible for the child to return to live with them in the foreseeable future may count.<sup>159</sup>

The IDIs go on to say "other means of meeting the child's best interests – than by the applicant's presence in the UK – need to have been considered and ruled out."<sup>160</sup> (Emphasis added.)

Furthermore, it is stated that the normal need for a child to be given genuine and effective care by both parents is reflected in the Rules and there must be substantive reasons why the child's best interests in this regard can only be met by granting entry clearance outside the Rules.

These contentions are hard to justify. As this report shows, the financial requirements are separating thousands of children from parents and therefore genuine and effective care by both parents is clearly being denied to these children. The limited and oddly selected examples of relevant factors emphasise economic considerations rather than the fundamental principle of family unity as the normal and usually the best way of procuring a child's best interests. The IDIs fall woefully short of a proper best interest consideration, being premised on the assertion that it is not in the child's best interests to be with their migrant parent.

### **6.5 Analysis of refusal letters: Are best interests of children considered in decision-making?**

In January 2013, John Vine, the then Independent Chief Inspector of Borders and Immigration, reported on an inspection on non-EEA partner applications from April to October 2012 vis-à-vis the best interests of the child.<sup>161</sup> Out of 39 cases that had been refused at entry clearance and involved children, in none was there evidence that the best interests of the child had been considered. Out of 21 cases for further leave and settlement where leave was refused and children were involved, in only one case were the best interests of the child considered.

For this report, eleven further refusal cases were analysed in order to see how decision makers have engaged with their duty to safeguard and promote the best interests of children. All cases were decided after the Immigration Rules (the 'Rules') were amended on 9th July 2012. Nine cases came from the Joint Council for the Welfare of Immigrants (JCWI),<sup>162</sup> one was supplied by a survey respondent and another was sent to JCWI by an immigration practitioner. In all cases bar one, the applications were rejected partly because the financial requirements had not been met. The findings are summarised in Appendix G.

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<sup>159</sup> Appendix FM 1.0 Family Life (as a Partner or Parent) pp. 51-52.

<sup>160</sup> Ibid p 52.

<sup>161</sup> Independent Chief Inspector of Borders and Immigration (Jan 2013) *An Inspection of applications to enter, remain and settle in the UK on the basis of marriage and civil partnerships: April-October 2012*.

<sup>162</sup> The Joint Council for the Welfare of Immigrants (JCWI) has a legal department and undertakes case work.

The Immigration Directorate Instructions (IDIs) specifically require decision makers to ‘carefully consider all of the information and evidence provided concerning the best interests of a child in the UK when assessing whether an applicant meets the requirements of the Rules’ and decision letters must demonstrate that such a consideration has been properly and fully undertaken (emphasis added).<sup>163</sup>

#### 6.5.1 Findings from decision letters and case outcomes

The three cases studies below have been taken from the refusal decisions analysed for this part of the report. They demonstrate the circumstances of each family and show why the best interests principle led to a judge allowing the appeal even though, in all cases, the assessment by the decision makers had been that the applicant’s circumstances did not warrant a grant of leave. The cases highlight shortcomings with the Rules themselves and demonstrate that the guidance given to decision makers in the IDIs is insufficient.

##### **Case Study 1**

H is a British citizen. Her husband, T, is a Moroccan national. The couple met on a language exchange website in 2008. The relationship progressed after they met in 2009 and they married in 2011. H moved to Morocco and lived with T and his family. When H returned to the UK to visit her family in 2012, she discovered that she was pregnant. Due to previous health problems, she was advised to remain the UK for the duration of the pregnancy. T obtained a visit visa to be with his wife and care for her through the pregnancy. He arrived in the UK in May 2012.

Although they had intended to return to Morocco after the birth, once their son was born the couple decided to remain in the UK particularly as H’s health had deteriorated rapidly and she was diagnosed with a debilitating health condition. At this point she was unable to even lift her baby son. T was now caring for both his wife and his son full-time. H was unable to work and relied on benefits for the first time in her life. If T returned to Morocco to apply for a spouse visa, there would be no one to care for H and their son and they would be further reliant on state benefits and social support. Their son would also face separation from his father, his primary caregiver, during the application process. As H could not meet the financial requirements, the application would have failed without consideration of H’s relationship with his British child in the UK and result in a protracted legal battle, during which time their son would be without a father and she would be without her husband and carer.

In an extremely unusual move the judge allowed the appeal under Article 8 on the spot saying he had “rarely seen a more clear cut case than this with regards to proportionality... There can, objectively, be no serious basis for suggesting on these very particular, even tragic, facts that the decision to return [T] is proportionate”. The family now lives together in the UK and the couple are expecting their second child.

<sup>163</sup> This is found in both IDIs. Appendix FM 1.0 Family Life 5- year Routes and 10 year Routes April 2015 p.6

### **Case Study 2**

A, a British national, met M, a Chinese national, in 2003 while both were living and working in China. They married in 2005 and have two children, C and O.

The family lived together in China, where A set up a successful business. However, their young son suffered from severe asthma and respiratory problems due to air pollution. After six months of chronic severe respiratory illness, the family decided to return to live in the UK to see if this would alleviate their son's health problems. M obtained a six month visit visa and the family returned to the UK together in 2012. C's health improved rapidly and he settled well into school. After Christmas, M returned to China with O to apply for a spouse visa. They thought the process would take a few weeks, but M was refused due to the fact that their savings, which were substantially over the amount required, were held in a business account rather than a personal account and the evidence submitted fell just short of the six months of statements required. An entry clearance review stated that there was no evidence to suggest that the mother's presence in the UK had a positive impact on C's health and that he could continue to live with his father, visiting his mother and younger sister when his father went to China on business trips. Alternatively, the family should go and live in China, despite their son's serious health problems. A review by an entry clearance manager held that while "upsetting", the separation of the children from a sibling and parent did not amount to compelling or compassionate circumstances.

M appealed the decision. The judge allowed the appeal under Article 8 and section 55, stating that it was not in the best interests of the child to either return to China or be without his mother in the UK. The family was separated for a period of nine months in total. They now live together in the UK, A's business is doing well and both children are settled in school.

### **Case Study 3**

L is a national of the Philippines, married to F, a British citizen. They have been together for nine years and have two young children who are both British nationals. F worked for an international company and travelled with the family, living in three different countries in seven years. Before moving to the UK, the family moved to the Philippines. However, both children contracted malaria and bronchopneumonia. These illnesses led to both children being hospitalised several times. In early 2012, the family came to the UK for a holiday and to visit F's family. However, due to the global economic downturn, F lost his job and the family decided to remain in the UK, where there was more family support. Both children enrolled in school and the family lived with F's parents while F looked for a job. F's parents were happy to support the family while they built a new life in the UK. They were delighted that their son had returned and they were getting to build a relationship with their grandchildren.

L applied for leave to remain as a spouse. However, she was refused because she had applied as a visitor. No consideration was given to the children's best interests or right to family life. L appealed the decision. The Home Office argued that the family should relocate to the Philippines and this was considered proportionate, despite evidence of the children's health problems there and of the extended family support and relationships they had in the

UK. The judge allowed the appeal, stating that it would not be reasonable to expect the children, British citizens, to leave the UK in order to remain with their mother, which would also result in separation from their paternal grandparents and other family members, with whom they had formed a strong bond. The children were making good progress in school and nursery and the judge found that leaving the UK would cause disruption to their education. It was also found unreasonable for L to leave the children in the care of their grandparents while she returned to the Philippines to make a further application. The family continues to live together in the UK, close to the children's grandparents. F has found a good job to support the family and the children are settled in school.

### 6.5.2 *The decision to refuse and best interests of the child: Overview*

The following key points emerged from the study of eleven refusal decisions:

- In eight out of eleven cases, there was a complete failure to consider children's best interests as the children were not mentioned at all. Decision letters did not take into account the relevant legal obligations under the best interests principle and they failed to demonstrate in their formulation that any consideration had taken place of 'the information and evidence provided concerning the children's best interests' as specifically required by the IDIs. In the three cases where there was consideration it was limited and flawed.
- Decision letters were hugely variable in their analysis of the relevant law and often cite inaccurate legal and factual provisions as the basis for refusal.
- Decision letters demonstrate the rigidity of the Rules which impacts adversely on children.

### 6.5.3 *In-country cases*

The following emerged from the six refusals of applications made in-country:

- In all six cases, the applicant was applying from within the UK and was on a visitor visa (including one case of a multiple entry medical visit visa). In all cases, the applicant had British citizen children in the UK. The applicants did not meet the financial requirements and EX.1 (the exception which would allow leave on the basis that they had British citizen children) was not applied because visitors are barred by the Rules from relying on it. In four cases there was a formulaic consideration of exceptional circumstances (which incorporates Article 8 and the best interests principles) with a routine formulation to the effect that Article 8 had been considered but the applicant did not meet its requirements.
- Out of those four cases, in two only the private life aspect of Article 8 was considered and family life was completely ignored.<sup>164</sup> There was no mention of the children. Thus, the presence of children was recognised only in two out of the six cases.
- In these two cases, there was a statement that the children's best interests had been taken into account. The decision letters stated that in 'considering exceptional circumstances the right to respect for family and private life under Article 8 and s.55

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<sup>164</sup> The requirements for residence on the basis of private life are set out in paragraph 276ADE(1) HC395.

Borders Act has been considered'. There was little actual substantive consideration in the refusal. In both cases it was said to be reasonable and in the children's best interests for them to be removed from the UK with the applicant who was their mother. The children were all British citizens. There was no reference to the father, the extended family unit or indeed the children's particular circumstances.

- In these two cases, there was a statement that the children's best interests had been taken into account. The decision letters stated that in 'considering exceptional circumstances the right to respect for family and private life under Article 8 and s.55 Borders Act has been considered'. There was little actual substantive consideration in the refusal. In both cases it was said to be reasonable and in the children's best interests for them to be removed from the UK with the applicant who was their mother. The children were all British citizens. There was no reference to the father, the extended family unit or indeed the children's particular circumstances.<sup>165</sup>

#### 6.5.4 Entry clearance cases

"I called every day in the beginning and then I was crying and talking... I was so upset. I missed my family, stuck there, I didn't know when I would come back, whether they will give me a visa or no. Uncertainty it kills a person, you know. I went through these bad emotional experiences during these two years. I missed my family, my son. Of course it was good, the time on Skype I could see my family. But it's bad too. You can't touch your family members, It's just on the screen. I tried to be calm. My son was very good, and you know, he tried me cheer up, 'Mummy, please don't cry' he said."  
Mother, son aged 10 years

In five cases, the applicant was applying from abroad for entry clearance as a partner. In all five cases the financial requirements were not met but the entry clearance officer failed to consider exceptional circumstances which is the only way there could be a best interests consideration under Article 8. In one case, the applicant cited Article 8 herself but the decision letter omitted any reference to Article 8 or exceptional circumstances.

In all five cases the decision to refuse leave was appealed which resulted in a review by an entry clearance manager (ECM) prior to the appeal being heard by a tribunal. In the case mentioned above where the applicant raised Article 8, the ECM wrote "I would strongly argue it is not appropriate to raise Article 8", which is a clear legal inaccuracy and prevented any consideration of the child's best interests.

In three out of five cases, ECMs also failed to consider exceptional circumstances or make any reference to Article 8 or the best interests principle. In one of the remaining two cases, Article 8 was referred to in a formulaic way without any consideration of the children's best interests. In the other case, highlighted above as Case Study 2, there was a rather disturbing analysis of the best interests of the child. The ECM held that, although the mother was in

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<sup>165</sup> Although the Immigration Rules prevent EX.1 from applying to visitors the cases we analysed, were prior to amendments that were made to clarify that visitors did not come within it. This change was introduced by HC532 para 52-55, and applies to all decisions made on or after 28 July 2014. Prior to changes, the drafting of the Rules an 'or' left open the possibility that EX.1 could apply to visitors.

China, her eight year old son was now in the UK and his respiratory problems which were exacerbated by pollution in China were under control, so that “the mother’s presence in the UK seems immaterial to the son’s health condition”. Furthermore, he added the “son could visit his mother in China” and therefore, in his view, Article 8 incorporating s.55 was fully complied with. Such statements fail to take into account a proper understanding of the child’s best interests yet they stem from the guidance provided to decision makers through the Immigration Directorate Instructions. The limited and flawed nature of these instructions has been discussed earlier in this section.

Four out of five appeals were successful and the appeals were allowed under Article 8. In each case the best interests were a primary consideration, although not the only consideration in the judge’s balancing exercise under Article 8.

“In assessing the public interest under Article 8(2) I have had regard to the provisions of section 117B of the Nationality, Immigration and Asylum Act 2002 as amended by section 19 of the Immigration Act 2014 and have attached weight to them....Turning to the particular circumstances of the appellants I have had regard to the UN Convention on the Right of the Child, with specific reference to Article 3 which refers to the best interests of the child being a primary consideration. Taking into account the public interest factors and after carrying out a balancing exercise, I find that the proposed interference in the appellants’ family life with the sponsor is a disproportionate response in all circumstances.”  
Immigration Tribunal Judge Kamara

## **6.6 Conclusion**

This section has looked at the national and international legal obligations on the Government to protect and safeguard a child’s best interests and has examined the Immigration Rules and Immigration Directorate Instructions (IDIs) relating to the right to remain or enter the UK as a partner. It has also looked at the quality of decision making to see if it encompasses the legal obligations upon decision makers to adhere to the best interests principle.

The Government maintains that the Rules comply with Article 8 ECHR and s.55 UK Borders Act. The IDIs add that the ‘normal need for a child to be given genuine and effective care by both parents’ is already reflected in the Rules. It is hard to see how this can be the case when the financial requirements are keeping tens of thousands of children apart from their parents. The effect of this upon children and their families is significant and often devastating. The Government also maintains that the financial requirements represent the public policy interests under Article 8, namely that immigration control and financial independence are in the public interest. However, applicants can be financially independent without meeting rigid and high financial requirements. If the price of the public policy, particularly when, as this report shows, its benefits are not clearly established, is interference with children’s rights that impact on their emotional and mental well-being, sense of stability and security, and ultimately happiness and development, then the interference contravenes the best interests principle and must be disproportionate. This

report concludes that that Rules do not strike the right balance and breach the best interests principle, Article 8 ECHR and the s.55 duty.

EX.1 has been included in the Rules to try to mitigate the negative impact upon children of the financial requirements and is said to safeguard the rights of children in the UK. It is the only provision in the Rules that is drafted specifically to comply with the s.55 duty. However, it is limited in its application as it only applies to British citizen children and to non-British citizen children who have lived in the UK continuously for seven years. Thus, non-British citizen children below the age of seven years, even if they were born in the UK, are automatically barred from coming within the exception. It is hard to reconcile mandatory refusal under the Rules of leave for a parent of a child aged six who has lived in the UK for all of his or her life with the best interests principle.

Additionally, EX.1 has been specifically drafted to exclude parents who are visitors. People with unlawful immigration status can benefit from EX.1 but the UK-based and mainly British citizen children of visitors are not protected.

EX.1 also does not apply when applicants apply from abroad for entry clearance for leave to enter as a partner, as required by the Rules, even though they have children in the UK. S.55 makes it a mandatory duty on all decision makers to protect the best interests of all children in the UK. This duty must apply to entry clearance decisions for leave where applicants have children who are already in the UK.

In addition, it is legally obligatory for entry clearance officers to consider the best interests of children who may not yet be in the UK but are affected by their decision to grant or refuse entry. The CRC and UN General Comment 14, described in the recent case of *SG*<sup>166</sup> as ‘the most authoritative guidance on the best interests principle’, and the body of existing domestic case law clearly indicates that entry clearance decisions are ‘decisions concerning children ... undertaken by administrative authorities and so Article 3 CRC must be a primary consideration’.<sup>167</sup> Indeed, until recently, Immigration Directorate Instructions which provide guidance on the Rules required entry clearance officers to be trained on the duty under s.55 UK Borders Act and to ‘apply the spirit of the legislation’ to children outside the UK. This requirement still exists in the statutory guidance for s.55, but has been removed from the Immigration Directorate Instructions (IDIs) and needs to be reinstated.

Thus, a large cohort of children in the UK is being denied the safeguards that EX.1 is meant to provide for their family life.

Although EX.1 is found within the Rules in Appendix FM, it is considered an exception and so if leave is granted under it applicants will not get a five year route to settlement. Instead they will get limited leave over a ten year period. This doubles the length of time for settlement, prolongs uncertainty and increases the cost of the visa application process.

If an applicant does not meet the requirements of EX.1, then decision makers have to look outside the Rules to exceptional circumstances or compassionate factors. This consideration

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<sup>166</sup> *SG & Ors, R (on the application of) v Secretary of State for Work and Pensions (SSWP)* [2015] UKSC 16.

<sup>167</sup> *Ibid.*

is supposed to ensure that there is an Article 8 assessment which includes the best interests of children. Children's best interests are reduced to an exception both under EX.1, as leave granted under it is treated as exceptional, and the assessment under exceptional circumstances or compassionate factors. The s.55 duty and legal obligations under Article 3 CRC should not be reduced to an exception to be considered outside the Rules. This marginalises the primary duty towards children.

Examples of exceptionality are identified in the IDIs and are very limited and narrow. Crucially they are premised on the basis that it is not in the child's best interest to live with both parents if one parent is abroad. Entry clearance officers are actively encouraged to explore 'other means of meeting the child's best interests – than by the applicant's presence in the UK'. The implication is that if parents are separated they have chosen to do so and so this does not make the case exceptional. For families who are trying to return to the UK after having lived abroad, the Rules almost mandate separation.

The Rules and IDIs make disconcerting reading when considered from the child's perspective. It cannot be right that a parent's presence in a child's life is only deemed necessary in arbitrary and limited examples. The parent-child bond has been reduced to an 'effective and material contribution'. In contrast, the guidance for in-country applications states that it is in the best interests for children to be with both parents even though this is the justification given for removing children with their parents from the UK. The IDIs are inconsistent and flawed and limit the proper application of s.55 UK Borders Act, Article 3 CRC and Article 8 ECHR. The IDIs play a large part in how decision makers interpret the law and they exacerbate the shortcomings of the Rules. They reduce the best interest principle to a mere exception and actively remind decision makers that cases where an applicant can succeed under Article 8 are rare. It would seem there is a threefold problem with the guidance in the IDIs: significant shortcomings and contradictions within the IDIs themselves; a lack of understanding by decision makers of the legal principles articulated within them; and a lack of application of the IDIs in decision-making.

This section also reviewed the quality of decision-making. This report has built on John's Vine's findings that children's interests are rarely considered by analysing a further eleven cases. In eight out of eleven cases, there was a complete failure to consider children's best interests and the impact on them of the decision to refuse their parent leave. Decision letters did not take into account the relevant legal obligations under the best interests principle and they failed to demonstrate in their formulation that any consideration had taken place of 'the information and evidence provided concerning the children's best interests' as is mandated by the IDIs. In the three cases where there was consideration it was limited and flawed. Decision letters are hugely variable in their analysis of the relevant law and often cite inaccurate legal and factual provisions as the basis for refusal. Factual mistakes are commonplace. Decision letters also demonstrate the rigidity of the Rules which directly impacts on children.

In all except one case where refusal of leave was challenged the applicant won on appeal. When judges carried out an Article 8 assessment balancing the importance of family life and children's best interests against public policy considerations they held the Government's interference in the child's life was disproportionate.



Thousands of British children are being forced to grow up without a parent solely as a result of the financial requirements. Children are being forced to grow up in broken homes as a result of the financial requirements. Prolonged separation diminishes the parental bond and adversely affects the family unit with emotional effects on children that may have long-term physical and mental health consequences.

The findings of this report conclude that the Rules and guidance provided to decision makers do not fulfil the Government's national and international legal duty to protect and safeguard children. Decision makers do not undertake a proper assessment of the best interests principle and are failing children. The seriousness of this cannot be underestimated and the Government needs to take urgent action to amend this situation.

**"The effect of these Rules on children is a time bomb waiting to explode."  
Sarah Teather, former Liberal Democrat MP**

## 7. Conclusion and recommendations

### 7.1 Concluding discussion

The UK now has the least family-friendly family reunification policies out of 38 developed countries.<sup>168</sup> The financial requirements are one of the major contributory factors to this situation. This report shows that the financial requirements introduced in 2012 have been responsible for the separation of thousands of British children from a parent. This may arise because the child lives in the UK with the British sponsor parent and the non-EEA parent cannot enter or remain in the UK due to the sponsor's inability to meet the financial requirements of the Rules. In other cases, the child remains abroad with the non-EEA parent. Sometimes, the whole family is stranded abroad even though the sponsor or child may have a pressing need to return to the UK.

This report has identified several factors which make the financial requirements over-restrictive:

- The income threshold appears to be the highest in the world in relative terms and the second highest in absolute terms<sup>169</sup>
- The threshold cannot be met by almost half of adult British citizens, including many in full-time work, particularly the young, the retired, women, ethnic minorities and those living outside London and the South East
- The requirements are too inflexible, do not take account of the overall financial position of families or consider factors suggesting that they will be self-supporting after entry
- The requirements do not reduce reliance on public funds by migrant partners and are counter-productive as they increase reliance on public funds by the sponsor parent, and increase their and their children's social exclusion
- Decision makers do not adequately apply the principle of the 'best interests of the child as a primary consideration' in arriving at a decision
- Applications are expensive and difficult to make.

Family life across borders raises concerns about effective immigration control but is an inevitable part of a modern, globalised world. It is not only an immigration question but engages the fundamental rights of British citizens and settled migrants including significant numbers of British citizen children. It is particularly important that, where children are concerned, immigration restrictions are not more severe than they need to be.

The evidence collected for this report shows that the current financial requirements go beyond what is needed to ensure that incoming migrant partners do not become a burden on the public purse and are able to participate in British society. In so doing, they are harming children in ways that are incompatible with the UK's obligations under the United Nations Convention on the Rights of the Child. These include, in article 10, an obligation to make 'positive, humane and expeditious' decisions on family reunification and, under article 3, to treat the best interests of the child as a primary consideration (the 'best interests' principle). These principles are reflected in s.55 of the Borders, Citizenship and Immigration

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<sup>168</sup> MIPEX n.1

<sup>169</sup> See section 5 of the main report.

Act 2009 and in s.6 of the Human Rights Act 1998, which put the ‘best interests’ principle onto a statutory footing in domestic law.

This report has highlighted that the best interests principle was not given adequate consideration in the formulation of the current rules, and that the principle is treated inadequately in guidance provided to decision makers or in the decision-making process. This has resulted in decisions being made that are harmful to children.

The evidence presented in this report concurs with the findings of the All Party Parliamentary Group on Migration, which also found that the financial requirements are damaging to children and families (see Appendix B). Given the unnecessary hardship and misery that the requirements are causing to ordinary families, the case for policy change is clear. The Government keeps the family migration rules under constant review and the findings of successive reports, including our own, should enable the next review to make the changes necessary to implement a policy that promotes the welfare of children.

## **7.2 What sort of changes are required?**

Changes are needed to amend the current financial requirements. While there is a place for exemptions and exceptions, the principle of children’s best interests as a primary consideration should inform the content of the Immigration Rules rather than being dealt with primarily through exemptions or exceptions. This would be in line with the Government’s overall policy aim of ensuring that the Rules comply with the UK’s international and domestic human rights obligations to children and provide confidence to those making applications that they will receive a decision that complies with those obligations.

Broadly, these obligations require that there should be a presumption of family reunification in applications involving children unless there is a very strong public interest in refusing the application. Under article 9 CRC, a child should not be separated from either parent unless this is necessary for their best interests. Best interests should be a primary consideration. They have high priority and are not just one of several considerations: ‘Larger weight must be attached to what serves the child best’.<sup>170</sup> In a rule-based system such as the Immigration Rules, this means drafting the financial criteria no more restrictively than necessary to ensure, with a reasonable degree of likelihood, that families with a migrant partner will be self-sufficient.

Even so, there will always be a few cases when rules, however carefully drafted, do not comply with the UK’s international obligations. It is not possible to identify in advance all the circumstances in which a favourable decision is needed to ensure that children’s interests are treated as a primary consideration. It is recommended that the Immigration Rules are also amended to widen existing exceptions to apply to British citizen children and to all children in the UK and to ensure applicants are given leave under the Rules if this is required by the ‘best interests’ principle. Children’s interests do not prevail automatically but, as this

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<sup>170</sup> SG n.128

report has shown, a careful and individualised assessment is required in all cases if applications are not to be wrongly decided.

Where leave for settlement is not immediately possible, visit visas should be granted to enable the family to be together for shorter periods. When the UK parent is trying to meet the financial conditions, is about to give birth or has a new-born child, it will be almost impossible for them to spend substantial time with the partner abroad so that visitor visas are essential in enabling family life to continue in the meantime.

The application process also needs to be made more accessible and fair. The research found that the evidential requirements are excessively complex, there are insufficient opportunities to correct minor errors, and applications are much too expensive, with costs that far exceed those in other countries.

Good rules need to be effectively implemented. The examination of refusal decisions for this report has shown that decision makers often fail to consider children's best interests adequately or at all. Often, they are not even mentioned or they are treated briefly and formulaically. This research did not identify a single case in which a decision-maker found that the financial requirements had not been met but that a child's best interests required leave to be granted outside the Rules. In line with international and domestic obligations, the UK courts have found that effective implementation of the best interests principle means that those best interests must be identified and evaluated through a careful and structured decision-making process. In order for this to happen, decision makers must be in a position to make a proper evaluation of the child's best interests in all decisions on entry or stay where children are involved. This requires improved training, guidance and supervision.

Currently, the Government does not know how many children are separated from a parent or forced to live abroad due to the financial requirements even though the overwhelming majority of children affected are British citizens and the data that would enable this information to be available is collected on application forms. To inform policy, data on all children affected by entry or stay decisions (whether or not they are subject to immigration control themselves) should be collected, reviewed and published.

In summary, we conclude that, in order to meet their international and domestic obligations to children, the Government should consider changes in the following six areas:

- Changes to the financial requirements in the Immigration Rules
- Inclusion of a requirement to consider the best interests of every child affected by entry or stay decisions as a primary consideration within the Immigration Rules
- Amendment to forms and guidance to ensure decision makers properly consider children's best interests in the decision making process
- Changes to the cost of applications and the application process
- Grant of visitor visas to parents of children living in the UK
- Data collection and publication.

### **7.3 Detailed recommendations**

#### **7.3.1 Changes to the financial requirements in the Immigration Rules**

Appendix FM needs amending to make it comply with the Government's legal obligations in respect of children. The evidence of this report is that the financial requirements are more restrictive than they need to be to prevent reliance by the migrant partner on welfare benefits and are often counter-productive as they leave British families reliant on welfare benefits when this could be avoided through the admission of the partner. The Government should consider ways to allow:

- Inclusion of the partner's potential earnings when calculating if the income threshold has been met (subject to reasonable evidential requirements)
- Inclusion of third party support (including but not only free or low cost accommodation) when calculating if the income threshold has been met (subject to reasonable evidential requirements)
- Provision for regional variations to reflect different earning patterns throughout the UK
- Reduction of the £16,000 threshold before savings are counted and assets (including equity in property) to count without first being liquidated.

The income threshold itself is too high. The Government has not explained why it has to be so much higher than other states who are equally concerned to prevent reliance by migrants on public funds and to ensure families with a migrant partner have a reasonable standard of life. It seems illogical that a minimum wage (or a living wage as it will become in April 2016) is regarded as insufficient to live on. The Government should consider:

- Reducing the income threshold to the equivalent of the minimum wage in the UK.

The position for families who have lived abroad and are returning to the UK is a particular concern. The financial requirements make it impossible for most families to enter the UK together. The Government should consider ways to:

- Take account of the relative level of wages earned outside the UK;
- Allow the family a reasonable period in which to live in the UK and find work without having to meet the financial requirements provided there is no recourse to public funds by the partner.

#### **7.3.2 Inclusion of a best interests exception in the Immigration Rules**

Even after reform of the financial requirements, there is still a need for provision within the Immigration Rules to cover instances which fall outside their requirements but where the 'best interests' principle requires the admission of the non-EEA partner. That is the purpose of paragraph EX.1 which was discussed in section 6 of this report. However, as presently drafted, there is still a gap between what paragraph EX.1 provides and the Government's obligations. As section 6 explains, EX.1 only applies to some applications for leave to remain and not at all to entry clearance applications. It is particularly difficult to understand why those in the UK without immigration status are in a better position than those who are present under the rules. It is also difficult to see why paragraph EX.1 does not apply to entry

clearance applications given that these decisions also affect children who are British citizens and/or in the UK. It is therefore recommended that:

- Paragraph EX.1 of Appendix FM should apply to all in-country applications irrespective of immigration status and to entry clearance applications.

There are other limitations in paragraph EX.1. It applies only to British citizen children and those who have been living in the UK continuously for seven years and, in either case, when it is not considered reasonable for them to leave the UK. Children may have been in the UK for less than seven years either continuously or at all but it may still be contrary to their interests to require them to leave.

If paragraph EX.1 is to meet the Government's obligations, further change is needed so that paragraph EX.1 covers a wider range of non-citizen children and by clarification of the reasonableness test. Paragraph EX.1 should be amended to provide that:

- It will apply where a child would be separated from a parent or forced to remain outside the UK by a decision to refuse entry clearance or leave to remain because of failure to meet the financial requirements (or the English language requirement to which paragraph EX.1 also applies)
- The application will be decided only after the interests of that child have been identified and treated as a primary consideration in reaching the decision
- The assessment of whether it is reasonable to require the child to leave or remain outside the UK will identify the child's interests and treat them as a primary consideration.

Consideration should also be given to whether:

- Applicants who succeed under paragraph EX.1 should be placed on the five year route to settlement instead of the ten year route.

### *7.3.3 Amendment to forms and guidance to enable decision-makers to identify and assess a child's best interests in order to make them a primary consideration in decision-making*

Section 6 of this report showed that decision-makers currently fail to meet their obligations to children when making decisions on the financial requirements. The defects are both procedural (children's best interests are not effectively identified and through the decision-making process) and substantive (they are not treated as a primary consideration). Changes to the decision-making process are needed to enable decision-makers to give the correct weight to children's interests. This begins with the application forms. The form used for entry clearance applications (VAF4A) does ask, at question 4.1, if there are issues relating to the welfare or best interests of children in the UK which they wish to bring to the entry clearance officer's attention. This insufficiently emphasises the potential significance of this information for all applications, not just those in which unusual circumstances may be present. Question 4.7 on the leave to remain application form (Form FLR(M)) merely asks if

there is any further information that the applicant considers relevant. A more specific enquiry is needed to ensure that decision-makers are cognizant of all relevant issues. Enquiries should not be confined to children in the UK:

- Application forms should be amended so that they request the information needed to enable decision-makers to identify and assess a child's best interests
- If a decision-maker is still unclear as to the effects on a child, they should invite applicants to submit further information and evidence.

The information obtained by decision-makers must be used by decision-makers to ensure that the child's best interests are a primary consideration. Where an application does not meet the financial requirements and a child will be affected by a refusal, a proper evaluation must be carried out of whether the 'best interests' principle requires leave to be granted. This requires a substantial rewriting of existing guidance which is currently much too narrow:

- The entry clearance guidance must ensure that, as with the in-country guidance, the starting point is that the best interests of a child are to be with both parents. It should remove the instruction to consider other means of meeting the child's best interests than by allowing the applicant's presence in the UK
- The need for entry clearance officers to apply the s.55 duty to children in the UK and to embrace the spirit of s.55 duty in respect of children outside the UK must be inserted into the entry clearance guidance and, in all guidance, there must be a proper explanation of the obligations on decision-makers by virtue of the CRC, s.55 UK Borders Act, article 8 ECHR and relevant jurisprudence.
- All guidance to decision-makers should require them to carry out a full evaluation of the circumstances of each individual child and what their best interests require before refusing an application
- The guidance should set out how such an evaluation is to be carried out in a structured way
- The guidance should make clear that the legal test is that the child's best interests are a primary consideration, and that this is an open-minded and individualised assessment in which undue weight should not be given to other factors. The test of 'unjustifiably harsh consequences' should to be removed
- Guidance which routinely subordinates a child's best interests to other considerations (such as looking at other ways in which the child's needs can be met other than through the applicant's presence, providing limited and extreme examples of when the best interests principle applies or treating a best interests decision as exceptional) should be removed.

If an application is still to be refused after the 'best interests' assessment, the decision letter must explain how this decision was reached:

- Refusal letters must not be in ‘boiler-plate’ terms but must set out the factors that were taken into account in determining the child’s best interests, what those interests were identified to be, the countervailing factors and why, in this instance, these outweigh the child’s best interests.

Decisions-maker must be trained and receive adequate supervision:

- Decision-makers should receive training in carrying out and applying the best interests evaluation
- Any refusal which affects a child must be reviewed and approved by a senior member of staff who has been trained in assessing the Government’s legal obligations to children.

#### *7.3.4 Changes to the cost of applications and the application process*

The fees charged for applications are excessive and poor value for money, particularly when combined with elaborate and prescriptive evidential requirements which mean that applicants are unable to judge in advance whether their application will succeed and risk wasting considerable sums. Applicants should not be expected to contribute to the general costs of immigration control. It is recommended that:

- The Public Accounts Committee investigate the cost of immigration applications with a view to aligning fees more closely to the cost of administering and deciding the initial application.

Applicants should also have an opportunity to put right errors in the application if these would otherwise prevent an application from succeeding. There is currently a provision in Appendix FM-SE, para D but this is discretionary and limited in effect. Given the vast amount of documentation and information that must be provided and the importance of the outcome for applicants, it is recommended that:

- Consideration should be given to reducing and simplifying the evidential requirements so that applicants do not have to prove the same fact in multiple ways;
- Appendix FM-SE, para. D should be revised to require decision-makers to offer applicants an opportunity to rectify omissions or errors within a reasonable period of time where the application otherwise falls to be refused because of the absence of documentation or because the documentation does not support the claim made in the application;
- If an appeal is successful, the necessary visa should be issued within a maximum of 14 days from the date of the decision.

## **5. Grant of visitor visas to parents of children living in the UK**

It is disturbing that, in the absence of serious adverse factors, partners cannot obtain visas to visit the UK to be present for the birth of their child or to spend time as a family even if they do not, at that time, qualify under the financial requirements. It is recommended that:



- The Immigration Rules should be amended to provide that, where an applicant either has a child in the UK or who is entitled to go to the UK, or their partner is shortly to give birth, a visitor visa should be granted in the absence of the most serious adverse factors provided the applicant shows that he or she can be maintained throughout the visit without recourse to public funds and possesses a return ticket.
- Guidance to decision makers should make it clear that the fact that a partner application has been or may be made should not be a reason for refusal.
- Evidence of compliance with the terms of previous visit visas should count strongly in favour of the applicant.
- Any refusal of a visitor visa should be subject to a thorough and reasoned evaluation of the child's best interests and why these do not require the grant of a visitor visa.

## **6. Data collection and publication**

The Government does not know how many children have been affected by the financial requirements. In fact, most of the information is already gathered on application forms although the entry clearance form (VAF4A) does not ask for information about all dependent children, only the applicant's own children (so excluding, for example, the sponsor's children from other relationships who may depend on the applicant). It is difficult to see how the Government can know that it is fulfilling its duties to children if it does not know how many children are affected by its policies and their circumstances. For that reason, it is recommended that:

- Form VAF4A should be amended so that it records the age, nationality and residence of all children who are the applicant's and/or the sponsor's dependants
- This data should be collated, disaggregated to show which of these children have been affected by a refusal and published regularly.

"We've got a saying in Arabic, I will translate it. 'If you want to be obeyed, ask what can be fulfilled'... Maybe it doesn't give the exact sense of the meaning, but if you want for somebody to obey you, ask me for something that I can do. But you can't ask me for something that I am unable to achieve."

**Father, two daughters aged 9 years and 9 months**

## Appendices

### **Appendix A - Methodology and statistical data**

The project sought to provide systematic evidence of the impact on children of the financial requirements, and in particular of the income threshold, two to three years after its implementation. Previous studies of family migration and the work done prior to the implementation of the financial requirements have focused on marriage migration,<sup>171</sup> which comprises over 80% of those entering through the family route, and have not considered children apart from the numbers of non-British children entering.<sup>172</sup> Whilst it is estimated that at least 15,000 children have been affected by the Rules, there is no information about the socio-demographic composition of the parents, the citizenship of the children or their residence in the UK or abroad, and the effects of familial separation upon them.

The study sought to gather empirical evidence of the effects of the financial requirements and consequent family separation on the well-being of children based on a substantial sample (100) who responded to the survey questionnaire, complemented by in-depth interviews (20) with a selection of those who had completed the questionnaires. Ethical approval for the study was obtained from the School of Law Ethics Committee at Middlesex University (where two of the research team are employed). Further information on the extent to which the best interests of the child had been taken into account was obtained from 11 refusal letters (nine of which were submitted to the Joint Council of the Welfare of Immigrants, another supplied by a survey respondent and another sent by an immigration practitioner).

#### *The survey*

The survey questionnaire was designed by the Children's Commissioner's team in consultation with the reference group. It was then posted on the Children's Commissioner's website as well as on the website of other organisations such as BritCits, JCWI and the Migrant Rights Network. The first posting generated 50 valid responses. Some were excluded because the difficulties in overcoming family separation were due to other problems such as failure to meet the language requirement, the adult dependents rule, attempts to switch from a tourist to a partner visa, or a partner having been deported.

A second tranche of questionnaires was generated using an on-line survey. It was made available on the Children's Commissioner's website and a range of other organisations (see above), and invitations to complete the questionnaire were extensively circulated through social media. Again 50 valid responses were collected, making 100 completed questionnaires in all, representing a highly diverse range of respondents and partners. The sample varied by age, gender, employment, educational attainment, region of residence in the UK, overseas country (low, middle and high income), income earned, number of children, and the outcome of their applications. Some had eventually managed to meet the income requirements, either through earning the necessary amount or by providing

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<sup>171</sup> Charlsley K., Storer-Church, K, Benson, M. and van Hear, N. (2012). Marriage-related migration in the UK. *International Migration Review* 46(4):861-90.

<sup>172</sup> *Family Migration: evidence and analysis*, n. 80.

satisfactory evidence; some had won appeals against refusal of partner or visitor visas. For others there was little possibility of living together as a family in the UK, without a change in the Rules. In nearly all cases, there had been a significant period of separation between parent and child.

The report is concerned only with the impact of refusal on children so the survey only included families where there had been a refusal under the financial requirements. As the Government does not publish collect demographic data on applicants, the research team was unable to construct a purposive sample. It is a diverse sample but it is not necessarily representative of the affected population and the researchers have been cautious about using it to reach conclusions about the demographic characteristics of that population.

The questionnaire covered three areas. The first section collected socio-demographic information on the family and included questions on the citizenship or residence status of the sponsor, educational level, employment status, occupation, income level, caring responsibilities, disability, number of children, their citizenship, which country they were living in and with whom. Information about the age, nationality and place of residence of the children was collected. Partners were also asked about their citizenship, whether they were in the UK, age, gender, education, employment status and, if working, how much they earned. The second section asked whether they had made an application for a partner and/or visitor visa, whether either had been refused, if so the reasons given, whether they had appealed and the outcome. The third section explored the impact of the financial requirements on parents and children. Questions also covered the frequency and means of contact between child and absent parent; childcare and living costs in the UK and abroad; the child's development, health and well-being; the child's behaviour and relationships with parents and other close relatives; the financial and emotional support received from family and friends; how they intended to overcome the problems faced.

The questionnaires thus provided a more systematic data set in respect of affected children than had previously been available from the submission of evidence to the APPG, which included responses from 45 parents with children, or surveys focused primarily on the problems of couples divided by the minimum income requirement, such as those conducted by BritCits or evidence compiled by Marianne Bailey Yamamoto (see Appendix B). The latter survey tended to focus on couples who were stranded abroad and couldn't return to the UK. In the Children's Commissioner's questionnaires, in the vast majority of cases, the British partner was resident in the UK and seeking to reunite their family (partner, child) here. There was also a sizeable group of British citizens in a wide range of countries wishing to return as a family to the UK.

#### *Interviews with parents and children*

Respondents to the survey were asked if they and/or their children (aged 3 years or over) were willing to participate in follow up interviews. Ten interviews were conducted over the phone or via Skype with a parent and ten interviews were conducted in person with parents and their children. In one interview, one parent was physically present, while the other parent participated in the interview via Skype. Eight interviews were conducted at the home of the family, one at the JCWI office and one at a children's centre. In most cases, a telephone or face-to-face interview was conducted with parents before the interview with

children commenced. Interviews were recorded on an external recording device and transcribed for later analysis.

### *Parents*

Before the interview commenced, all participants were shown and asked to sign a consent form outlining the aims and purpose of the research and explaining their right to decline to answer any questions and to withdraw their participation at any time. Where interviews were conducted over the phone, participants were sent the questionnaire in the post or via email to return to the researchers.

The questions asked varied depending on the circumstances of the family, whether they were in the UK or abroad and whether they were currently separated, risked separation or had experienced a period of separation in the past.

The questions were open-ended and phrased to be as non-leading as possible. Questions asked about the relationship and where the parents had met, the decision to live together in the UK, the legal process and problems they had encountered in meeting the financial requirements and trying to live together in the UK, income and support, health and the perceived impact of the financial requirements on their children. General questions also asked parents about how they wished to raise their children and their views on identity. Participants were encouraged to lead the interview process and talk about topics which mattered to them, in order to illuminate the issues families felt were important and avoid the researcher imposing her views onto the participants.

### *Children*

Interviews with children were conducted in the presence of one or both parents. The format of the interview varied depending on the age of the child and views of the parent. Before the interview commenced, a discussion was undertaken with parents about the proposed format of the interview and, where requested, the interview plan was provided to parents and their views and input were encouraged and incorporated into the structure of the interview.

At the beginning of the interview, the interviewer introduced herself to the child and explained the purposes and aims of the research and the format of the interview. The interviewer also explained to the child that he/she can leave the room and stop the interview at any time. The child participant was encouraged to guide the interview process and talk about topics which mattered to them. Child participants were encouraged to say when they did not want to answer a question or felt uncomfortable and were allowed to stop the interview or come and go as they pleased. Younger children were encouraged to play with their own toys during the interview.

Informed consent was sought from the child. Where children were under the age of five, the consent form was signed by the parents. Children over the age of five were asked if they wished to sign the consent form or for it to be signed on their behalf by a parent. In these cases, consent was also sought from the parent. Child participants were also encouraged to ask the interviewer questions.

All interviews took place in the home of the child, or in a location where they felt comfortable, chosen by the parent/guardian. The safety and well-being of the child was the paramount consideration at all times. The interviewer remained aware throughout the interview process of whether the child was comfortable with the course the interview had taken. If at any point the child expressed discomfort with the interview process, the interview was stopped.

Depending on the age of the child, the interview took different forms. Children between the ages of three and 10 were encouraged to draw pictures of their family or home and answer questions about what they are drawing, who is in the picture, what they are doing and how they are feeling. Drawing materials were provided by the interviewer.

Family photographs were also used as an aid in interviews with children between the ages of three and 16. Parents were asked to provide photographs of present and absent family members and notable occasions. Children were then asked about what the photograph showed, who is in the picture, what they remember about the occasion and what they think the people in the photographs are thinking and feeling.

Semi-structured interviews were undertaken with children over the age of seven. During the course of the interview session, while the child was drawing or playing, questions were asked about the composition of their family, contact with family members, where they live and visits abroad, school and wider family networks, identity and their understanding of their family circumstances. In interviews with children over the age of 10, the interview was often more of a conversation without the aid of photographs or drawing materials, depending on what the participant wanted to do.

#### *Analysis of questionnaires and interviews*

Interview transcripts and qualitative answers from the questionnaires were coded for recurring themes. These were then grouped into broad themes, (e.g. children's development, health and well-being; behavioural impacts on children; their relationships with parents, relatives and other children). Themes were compared and analysed further into more specific topics (e.g. sleeping problems; eating problems; tantrums; anxiety and insecurity, social withdrawal and reluctance to grow up, over-reliance on one parent and inability to bond with the absent parent). Recurrence of certain themes was noted, as well as the age of the child and length of separation. The main themes, which emerged through the analysis, formed the basis for the reported impacts.

#### *Legal analysis of interests of children in refusal letters*

Further information on the extent to which the best interests of the child had been taken into account was obtained from an analysis of 11 refusal letters submitted by clients, nine to the Joint Council of the Welfare of Immigrants (JCWI) and two to solicitors, and passed to JCWI. All clients had made an application under the financial requirements and had been refused because of the financial requirements. Where an applicant had appealed, the Entry Clearance Manager's Review was looked at if the case was from an applicant abroad and appeal determinations were analysed in all cases in which an appeal was brought. All of the

JCWI cases were appealed. As two cases were sent externally, it is not known if the refusals were appealed.

*Statistical data*

100 valid questionnaires were received. Respondents did not always complete all questions or preferred not to answer some so that the total responses for some questions, for example on income earned, are less than 100.

1. Information about sponsors

*Table 1 Citizenship status:*

Citizenship status of sponsor	No
British	89
ILR	10
Refugee	1
<b>Total</b>	<b>100</b>

*Table 2 Gender*

Gender of sponsor	No
Male	42
Female	58
<b>Total</b>	<b>100</b>

*Table 3 Age and ethnicity*

Age		Ethnicity	
18-24	8	White British	71
25-34	35	White Other	2
35-44	36	Mixed	6
45-54	16	Asian	11
55-64	4	Caribbean/African	4
65+	1	Other	4
<b>Total</b>	<b>100</b>	<b>Total</b>	<b>98</b>

All 8 of the 18-24 years are female

*Table 4 Country of birth:*

<b>Country of birth</b>	<b>No</b>
In the UK	72
3 in each of India and Zimbabwe	6
2 in each of Pakistan and South Africa	4
1 in each of Albania, Bermuda, Canada, Gambia, Germany, Hong Kong, Iran, Kenya, Mauritius, Serbia, and Tunisia	11
Not specified	7
<b>Total</b>	<b>100</b>

77.4% of those who gave an answer were born in the UK

*Table 5 Region of residence in the UK*

<b>Location of sponsor</b>	<b>No</b>
London	12
South East	11
South West	13
North West	8
West Midlands	7
Yorkshire and Humberside	6
Scotland	6
North East	5
East of England	3
Wales	3
East Midlands	2
UK no region specified	4
Not in the UK	16
<b>Total</b>	<b>96</b>

Table 6 Educational attainment of sponsor

<b>Educational attainment</b>	<b>No</b>
No certificate/primary	2
Secondary school	29
University degree or diploma	49
Masters level	17
Prefer not to say	3
<b>Total</b>	<b>100</b>

66 out of 100 or 66% are university or equivalent educated.

Table 7 Employment status

<b>Employment status</b>	<b>No</b>
Employed permanent full-time	34
Employed permanent part-time	8
Employed fixed term	8
Self employed	15
Unemployed	28
Not specified	6
Retired	1
<b>Total</b>	<b>100</b>

Table 8 Income of sponsor

<b>Income of the sponsor</b>	<b>No</b>
Up to £13,400	35
£13,400-£18,600	20
£18,600+	21
Exemptions –DLA, PIP, carers	7
Did not say	17
<b>Total</b>	<b>100</b>

**Note:** Each category reflected diverse situations. For example, amongst those who earned **less than £13,400**, some were in low paid employment (cleaner, nursery assistant, learning



support worker, driving instructor, shop worker, labourer). A number of women were caring for young children and were on benefits. Whilst some in this group may not have qualified under the old rules, many would probably do so if the prospective earnings of the partner (landscape gardener, IT admin, chef, accountant, manager) were to be taken into account and/or third party support allowed. Others had no income during a transitional period while they moved back to the UK. For those unable to return, there were several British citizen women who were not working but who enjoyed a high family income. In other instances, the sponsor's overseas income did not translate into a sufficiently high level to meet the income requirement because of the relatively low level of earnings in the other country.

In the category **£13,400 -£18,600**, there were several sponsors whose income varied substantially from month to month. For this project, the earned income used was the average. In the higher category above £18,600, there were several individuals who required a higher amount to bring in non-citizen children. A number of British citizens had returned to the UK ahead of their partner, and sometimes children, in order to demonstrate they could earn the stipulated amount for 6 months.

## 2. Children

*Table 9 Citizenship of children:*

<b>Citizenship</b>	<b>No</b>
British	126
South Africa	7
India	4
3 in Thailand and US	6
2 in each of Bangladesh, Iran, Kenya and Russia,	8
1 in each of Afghanistan, Canada, Egypt, Gambia, Israel, Jamaica, Nepal, New Zealand	8
<b>Total</b>	<b>159</b>

79.2% are British citizens. 17 of the British citizen children currently live abroad. There were no settled children in the UK; all non-British children lived abroad.

*Table 10 Who the child lives with*

<b>Lives with</b>	<b>No</b>
Both parents	46
Mother	87
Each parent 50%	2
Father	13
Grandparents	2
<b>Total</b>	<b>150</b>

**Note:** Some of the children are now living with both parents (including a step parent) as a result of meeting the financial requirements. Others are living with both outside the UK but are unable to return with both parents because of the inability to fulfil the financial requirements.

### 3. Partner information

*Table 11 Location and immigration status of partner in UK*

<b>Status of partner</b>	<b>No</b>
Not in the UK	68
In the UK on partner visa	4
In UK on temp status	17
In UK without visa	4
Not specified	7
<b>Total</b>	<b>100</b>

*Table 12 Partner educational attainment*

<b>Partner Education</b>	<b>No</b>
No certificate/primary	7
Secondary	40
University	35
Masters	13
Not specified	5
<b>Total</b>	<b>100</b>

*Table 13 Partner employment*

<b>Partner employment</b>	<b>No</b>
Employed permanent full-time	39
Employed permanent part-time	4
Employed fixed term	9
Self employed	12
Unemployed	27
Volunteer	1
Not specified	8
<b>Total</b>	<b>100</b>

*Table 14 Citizenship of partner*

<b>Citizenship</b>	<b>No.</b>
United States	10
Morocco	7
6 in each of South Africa, Thailand and Turkey	18
5 in each of China and Egypt	10
India	4
3 in each of Jamaica, Japan, Mauritius, Pakistan, and Russia	15
2 in each of Canada, Ghana, Iran, Indonesia, Kenya, and Nepal	12
1 in each of Albania, Afghanistan, Algeria, Argentina, Australia, Chile, Dominican Republic, Ecuador, Ethiopia, Gambia, Guatemala, Israel, Malaysia, Mongolia, New Zealand, Nigeria, Philippines, Serbia, Syria, Tanzania, Tunisia, and Uganda	22
<b>Total</b>	<b>98</b>

## **Appendix B – Data and information already in the public domain**

BritCits, a non-governmental organisation established in response to the changes in the Immigration Rules in 2012, supports affected families and advocates for a change in the Immigration Rules. BritCits have worked closely with JCWI and the Migrants Rights Network (MRN) to run the Divided Families Campaign. They have compiled and published a portfolio of stories from individuals affected by various aspects of the new Rules. Their most recent version (January 2015) contains 168 case studies, of which 38 (22.6%) were families with children who have been affected by the partner visa requirements. In addition, they ran a poll to which there were more than 500 respondents. More than 80% of respondents were British citizens (with most of the remainder having indefinite leave to remain).

Marianne Bailey Yamamoto, a British woman personally affected by the financial requirements, compiled a report which was submitted to the Home Secretary Theresa May in June 2013.<sup>173</sup> The report consists of 35 case studies of British citizens and their non-EEA partners who have been unable to meet the income-requirement for a variety of reasons, including 17 families with dependent children.

The All Party Parliamentary Group on Migration (APPG) was set up to support the emergence of mainstream, progressive policy debate on migration in the UK parliament. On 20th November 2012 the APPG launched an inquiry, chaired by Baroness Hamwee, to look at the impact of the then new family migration rules and in particular the new minimum income requirement.

The APPG received over 280 submissions from charities, lawyers, local authorities, businesses and MPs. 175 submissions were from affected families themselves, with 160 families affected by the minimum income requirement. 45 submissions involved children separated from a parent. All of the affected families that submitted submissions to the inquiry wished to remain with their families in the UK. The APPG's report was published on 13th June 2013 and made a number of recommendations, including that:

The family migration rules should ensure that children are supported to live with their parents in the UK where their best interests require this. Decision makers should ensure that duties to consider the best interests of children are fully discharged when deciding non-EEA partner applications. Consideration should be given to enabling decision makers to grant entry clearance where the best interests of children require it.<sup>174</sup>

The submissions to the APPG and the case study portfolios published by BritCits and Marianne Bailey Yamamoto all revealed similar themes, which are outlined in the main report.

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<sup>173</sup> Bailey Yamamoto, M. (2013), "Report, Personal Stories And Research on The Impact Of The New 2012Spouse Visa Rules With Recommendations", Available online: <http://www.scribd.com/doc/150780718/Report-On-The-Impact-Of-The-New-2012-Spouse-Visa-Rules-With-Recommendations#scribd>

<sup>174</sup> *Report of the Inquiry into New Family Migration Rules* n.77 above, p.35.

### **Appendix C – Estimating the number of children affected**

The vast majority of children affected by the financial requirements are British citizens or residents and they do not show up in the immigration statistics. Although information about applicants' children is recorded on visa and leave to remain application forms, this information is not collected by the Government. There is therefore no official data on how many children have been affected which is why, for this study, the research team sought to produce an estimate of the numbers affected by the Rules.

Using a variety of sources of data, the research team has estimated that at least 15,000 children have been affected in the three years since the financial requirements were introduced. This figure will continue to rise until the financial requirements are changed. This appendix shows how this estimate was made.

In its Impact Assessment, the Government estimated that, as a result of the 2012 changes, the number of successful applications by partners would decrease by between 13,600 and 17,400 per year.<sup>175</sup> In fact, the reduction seems to have been somewhat less than that if 2011, the last full year before the requirements were introduced, is taken as a starting point (see Appendix F, Table 1). There were 10,015 fewer successful entry clearance applications in 2013 and 7,088 fewer in 2014 than in 2011. However, the figures in 2011 were much lower than in 2010 because of the introduction in late 2010 of the pre-entry English test for partners. If 2010 is taken as the base line, there were 14,933 fewer successful applications in 2013 and 12,006 fewer in 2014. It is likely that some (although not all) applicants whose admission was delayed by the English test would have applied successfully in later years if it were not for the financial requirements. However, a continuation of the previous downward trend in applications had the changes not been implemented cannot be precluded although there is no evidence that this would have happened and, in its Impact Assessment, the Government did not anticipate a continuation.<sup>176</sup> A compromise taking into account all these factors would be to take the average of falls if both 2010 and 2011 are taken as the base line which gives additional refusals of entry clearance applications in each year since June 2012 of 11,010.

A further factor to take into consideration is that some other changes were implemented contemporaneously with the financial requirements in 2012. However, these are likely to have had a very small impact on numbers. In its Impact Assessment, the Government estimated that between 96% and 99% of the anticipated reduction in numbers would be due to the financial requirements.<sup>177</sup> It is possible therefore that about 200 of the 11,010 refusals were due to other reasons, bringing the estimated number of reductions due to the financial requirements to about 10,910 in each year..

To this should be added additional refusals of leave to remain. Here the picture is more complicated as numbers granted leave to remain increased substantially after 2012. This is likely to be due to an increased number of grants of leave under Appendix FM, para EX1 which offered a new route under the Rules for irregular migrants in the UK who have

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<sup>175</sup> *Impact Assessment* n.12 above p.20.

<sup>176</sup> *Ibid* p.15.

<sup>177</sup> *Ibid*, pp. 4 and 20.

children.<sup>178</sup> However, the report has shown that leave to remain applications involving children continue to be refused. This may be because applicants on visitor or other short-term visas are not eligible, the child is not a British citizen or it is considered reasonable for the child to leave the UK. In the survey carried out for this report, 17 applicants (17%) were in the UK on a short-term visa. The Government has said that 593 leave to remain and 3,963 entry clearance applications were put on hold in the year between the July 2013 High Court judgment in *MM* and the Court of Appeal judgment in July 2014 because the sole reason for refusal was inability to meet the income requirement.<sup>179</sup> Leave to remain applications were therefore about 13% of that total.

If the mid-point between these two percentages (15%) is taken as the proportion of leave to remain applications to all applications and is scaled up to match the approximately 10,910 fewer entry clearance applications made each year, the equivalent figure would be 1,636 applications for leave to remain that would not have succeeded because of the financial requirements.

Adding these two figures together (10,910 entry clearance and 1,636 leave to remain) gives a total of about 12,546 fewer successful applications each year as a result of the Rule. In the three years between July 2012, when the rule was implemented, and July 2015, that would mean that 37,638 fewer applications have succeeded in total due to the new financial requirements.

It is unknown how many of those applicants have children. In its *Report on Family Migration*, the APPG noted that, out of 175 submissions received from families, 45 involved families with children who were separated from one parent i.e. 25.7%, although this figure.<sup>180</sup> This is remarkably similar to the figure found by BritCits in its survey of those affected by the financial requirements, which found that 25.8% of respondents had at least one child (this percentage is not the same as that given Appendix B because those figures concerned applicants refused for a variety of reasons).<sup>181</sup> If it is assumed that 25.7% of families (9,673) had at least one child, and that the likely average number of children is 1.59 (based on the findings of the survey where there were 159 children born to 100 respondents), 15,380 children have been affected.

The figure of 1.59 children per family is lower than the 1.8 average number of dependent children in a household according to the 2011 census but the profile of the families affected by the financial requirements is likely to differ from that of families in general and the 1.59 figure is regarded as the more reliable (although still imperfect) indicator.<sup>182</sup> It is possible that more than 25.7% of affected families have children. Marianne Bailey Yamamoto's 35 case studies of British citizens and their non-EEA partners unable to meet the income requirement included 17 (49%) families with dependent children. However, the sample was

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<sup>178</sup> Home Office *Immigration Statistics January to March 2015* Table ex\_pc\_f.

<sup>179</sup> Home Office Response to Data Request from Children's Commissioner 12<sup>th</sup> June 2015.

<sup>180</sup> *Report of the Inquiry into New Family Migration Rules* n.77 above, p.7.

<sup>181</sup> Personal correspondence with Britcits.

<sup>182</sup> Office for National Statistics *Households and Household Composition in England and Wales, 2001-11* 29<sup>th</sup> May 2014 p.25.

smaller than the survey while its focus on families living overseas means that it may have contained a higher than average number of families with children.

So, while it is not possible to know how many children have been affected by the financial requirements, an informed estimate is that at least 15,000 children were affected between July 2012 and July 2015.

## ***Appendix D – Literature review: Attachment and disruption in children of separated parents***

### *Introduction*

Literature on family migration and child psychology demonstrates that children benefit from stable relationships with parents and caregivers, and separation from either parent can be harmful. This review of the literature begins with an overview of general child attachment theory before moving on to explore in detail existing literature concerning separation of child and caregiver, including in the context of migration. The literature outlines a number of negative effects of separation. These include emotional withdrawal from or aggression towards the absent parent, social withdrawal from peers, relationship difficulties, and low self-esteem. Physical health can also be affected. Children's ability to manage change in their relationships is also influenced by the feelings and attitudes of other family members and by uncertainty as to how long separation may last. The longer the period of separation and the older the child, the more difficult it is to re-establish a parental relationship after separation. Some negative effects (for example, low self-esteem and behavioural difficulties) may never be reversed. The evidence outlined here suggests that it would not be in the child's best interests to be separated from a parent unnecessarily, especially where it is for an uncertain period of time and represents a stressful situation for the family.

### *Child attachment theory*

Research into the impact of early attachment bonds and behaviour in later adult life owes a great deal to the work of John Bowlby. His theories of attachment and loss (1969; 1973; 1980) developed much of our understanding of child attachment. Attachment is the bond that forms in the early years of life between an infant and their caregiver. Bowlby's (1969; 1973; 1980) ethological perspectives of attachment stress the role of the caregiver's responsiveness to the child during the first year of life. He argues that infants and caregivers are biologically programmed to elicit and provide attachment behaviour through responsiveness to physical signs (such as crying and smiling), and later the infant's ability to follow the caregiver by crawling and toddling in order to remain close to them. Bowlby argued that 'insecure attachment' can arise from the quality of the caregiver's responsiveness to the infant's attachment-seeking behaviour and also from disruption to early affectional bonds such as separation from a caregiver (Bowlby, 1968). Bowlby suggested that the effects of loss and separation extend to disruption of bonds to the father as well as to the mother, and range beyond the ages of 0-5 years up to the age of 14 years (Bowlby, 1969). Successful attachment enables a child to learn to monitor their environment for danger and stress, and to assess the accessibility of their caregiver. This allows the infant to develop a model which provides representations of the caregiver, their relationship with them, and how deserving they are of nurturant care. This model influences the links with subsequent emotion understanding, conscious development and self-concept as the child grows (Thompson, 2006).

Bowlby's work in collaboration with James Robertson (1952) developed the 'protest, despair, detachment' cycle. Bowlby and Robertson studied the behavior of children who were separated from their caregivers due to being admitted to hospital. Their film '*A two year old goes to hospital*' showed the distress the separation caused (1953). A similar study



was conducted by Heinicke and Westheimer (1966). They observed the impact on infants who were separated from their mothers through being in residential nursery and observed the 'protest, despair and detachment' cycle. The infants showed increasing levels of protest, followed by despair and then detachment, through avoidance of forming new attachments or reuniting with their mothers. These findings were later challenged, such as by Barrett (1997) who found that if a child is securely attached they cope better with separation. Shaffer and Callender (1959) also found that babies aged less than seven months who were admitted into a children's hospital showed minimal upset but that the strength of the response increased up to the age of 18 months.

The emphasis that Bowlby placed on strong attachment in the early years of childhood is echoed throughout the literature. Many authors have highlighted the long-term effects of secure attachment in the early years of a child's life. Sroufe et al. (2005) suggest that positive caregiving in early years encourages social competence among children, improving their interaction with others, as well as emotional health, higher self-esteem, self-confidence, and romantic relationships through adolescence. In addition, cognitive and socio-emotional competence at four years old has been linked to the development of secure attachment in earlier childhood (Fish, 2004). Contrastingly, girls who form insecure attachments in childhood have been found to be more vulnerable to experiencing psychological disorders such as depression in adulthood (Bifulco et al., 2002). Similar findings had been reported by Winnicott (1958) who argued that stable parental relationships are needed for children to develop into secure adults. Westen (1989) identified that the capacity to develop object relations, necessary to underpin secure attachments, continues to develop through infancy into adolescence.

#### *Global family migration trends and the nature of migratory separation*

There has been growing interest in researching the consequences of separated families and the subsequent reunification of children with parents, both in countries of immigration (EU, North America) and emigration (Eastern Europe, Mexico, the Philippines). Whilst international migration has increased in the past two decades, many states restrict the migration of entire families to those who are 'highly skilled' or earning high incomes. In the European Union and North America migrants who move for labour purposes often have to prove that they are capable of ensuring the stable settlement of spouses and children before dependent family members can migrate. Children may also be left behind temporarily by working parents because of the high cost of childcare, as was the case of Ghanaian nurses in the UK (Wong 2014), or whilst the parent(s) finds more stable employment. Children are then left with other carers. Separation can last for different periods and be experienced differently (time away and together, frequency of visits, telephone calls and Skype calls) (Bonizzoni & Leonini 2013). Until recently, fathers were often the first to move. However, mothers are now often migrating in pursuit of better economic stability (ibid.). The parents interviewed by Bonizzoni & Leonini (ibid.) described sadness at separating from their children and the importance held among parents that their children understood the reason for the separation, for example economic difficulties or dangerous circumstances in the home country.

The country of immigration can also have a major impact on the length of time families are separated. In some countries, citizens enjoy more rights to family reunification, such as

France, Germany and Italy, but in others they do not, such as the Netherlands and the UK (Wray et. al. 2014). Furthermore, the ability to reunify the family in the country of their choice may be complicated by the breakup of a family and its subsequent re-composition with children from different marriages and relationships and citizenships. Yet unlike recent migrants, citizens have access to welfare benefits and services available in the particular country in question, and many may be able to call upon parents and friends to give them support.

#### *Effects of separation of children from caregivers through migration*

In a longitudinal, mixed methods study of 385 children aged between nine and 14 years old who were recent immigrants to the USA from Central America, China, the Dominican Republic, Haiti and Mexico, Suárez-Orozco et al. (2002) gathered quantitative and qualitative data to explore the effects of separation and reunification on the children of migrant families<sup>183</sup>. They found that 85% of children had been separated from one or both parents during the process of migration and this differed by ethnicity. Children were most likely to be separated from their fathers (79% of the sample). 55% were separated from their mothers. The study not only highlights trends but also explores the effect of separation on those impacted. They found that establishing a new home in the host country was often protracted due to financial, legal and personal reasons, and frequently took longer than had been initially expected. Using family separation and family constellation patterns as predictors and psychological scales measurements as outcomes, the study found that children living in 'intact' families showed significantly fewer depressive symptoms than those in other types of family arrangements. Children who were separated from both parents showed higher levels of reported depressive symptoms than non-separated children. Girls who were separated from their parents were more likely to report depressive symptoms, with differences in levels reported between the different ethnic groups.

A detailed and notable study into the effects on children of separation with parents through migration was conducted in Italy by Bonizzoni (2012). This study included 65 mothers and 25 children and was conducted over 14 years. It found that younger children and those who had experienced separation for shorter periods faced fewer problems. In Italy, many children had experienced at least four years of separation before mothers were able to make an application for the child to join them in the receiving country. Similarly, in Canada many Filipinas have worked as Live-in-Care Givers who cannot bring children with them for the first two years, and it may be several more years before the children are actually able to re-join their mothers (Kelly 2013; Pratt 2012). Length of separation and the age at which children were separated affect the ease with which new relationships are forged. After a period of separation, children reported feeling disorientated in their new families, sometimes not recognising their parent and sometimes being fearful of them. Learning to live together again and adjust to their new lives changed the mother-child relationship, such as trust, intimacy, responsibilities and disciplinary relationships. Older children also faced interrupted schooling (Bonizzoni and Leonini 2013; Kelly 2013; Pratt 2012). However, most children in the Italian study proved resilient.

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<sup>183</sup> In the USA, high levels of deportation and stepwise migration have resulted in 35% of children living in families that have experienced short- or long-term loss of one or both parents.

### *Physical and psychological impacts of separation on children*

The quality of the parent-child relationships, as well as relationships with alternative caregivers, has been shown to influence the child's adjustment to separation and reunification. Children appear to adjust more easily to the father being away than the mother (Dreby, 2007) but when the mother or both parents are away they may attach to a substitute caregiver (Abrego, 2009; Dreby, 2007). Younger children who are separated begin to emotionally withdraw from their mothers whilst older children (adolescents) typically become more independent or to more aggressive (Dreby, 2007; Smith, 2006). A retrospective examination of the psychological well-being of children who had been separated and then reunited with parents during their childhood found that self-esteem and behaviour can be negatively affected and not always repaired with time (Smith, Lalonde & Johnson, 2004). Length of separation and the addition of new family members increased the risk to successful reunification.

Research into the physical health of children has shown that young people living in single parent families in the USA in 2002-2003 suffered significantly more from oral, respiratory or trauma-related problems than those living in two parent intact families (Bramlett & Blumberg, 2007). They were also more likely to develop adjustment disorders, difficulties at school and to require more specialised medical care as older children (ibid). A Belgian study of infants aged between seven and 11 months (Kacenenbogen et al. 2015) concluded that there is a significant increase in the percentage of health problems in infants when parents are separated compared to when parents remain together. It was amongst those parents who had separated rather than single parent families that stronger association between parental separation and abnormal results were found.

### *Developmental and behavioural impacts of separation on children*

Disruption to relationships and traumatic experiences can result in behavioural problems and both long- and short-term developmental problems in children. For example, changes in routines and children eating meals alone have been found to affect the relationship children have with food. These can come about when a child's care is taken over by extended family or community members or when a single carer's work pattern changes in response to changes in spousal relationships (such as separation requiring the remaining carer to take up a new job or increase their hours). Disturbances in attachment have been linked with eating disorder symptomatology (Ward et al. 2000). Studies of women at college in America found that women who displayed more co-dependent characteristics also showed higher levels of eating disordered behaviour and conflictual separation from parents. Research has shown that young women with secure parental attachment show lower levels of weight and dieting preoccupation and bulimic behaviour, as well as fewer feelings of ineffectiveness compared to women diagnosed with an eating disorder (Kenny & Hart, 1992). The presence of a positive and emotionally supportive parental relationship in conjunction with parental fostering of autonomy is inversely associated with weight preoccupation, bulimic behavior, and feelings of ineffectiveness (ibid). The findings suggest that co-dependency may serve as an additional variable in the relationship between eating disorders and separation/individuation difficulties (Meyer & Russell, 1998). Conversely, increased risk of major depression and generalised anxiety disorder of females under the age of 17 was associated with parental separation but not parental death and with separation from either mother or father. (Kendler et al. 1992).

### *Impact of parental stress on children*

Anxiety, stress and deteriorating mental health among parents also has a direct impact on children. High levels of parental stress have been linked to separation anxiety, attentional deficits and depression in children (Huang et al., 2014). One reason for this is that stress impacts on the developing brain (Lupien et al., 2009). Extended periods of stress may also undermine a child's physical development (Blair & Raver, 2012; Thompson & Haskins, 2014). As the body is going through such rapid developmental changes, children are particularly vulnerable to the effects of stress.

### *Pre-natal stress*

Increased risks of miscarriage and pre-term labour have been found among mothers with high levels of stress (Mulder et al., 2002). Stress during pregnancy has also been found to be particularly detrimental to children. The higher the level of prenatal stress the more negative the effect, particularly so earlier in the pregnancy (Laplante et al., 2004). Children of mothers who experienced higher levels of pre-natal stress showed lower IQ, verbal IQ and language abilities at five and a half years old than children of mothers who experienced moderate or low stress during pregnancy (Laplante et al. 2008). Children of mothers who are stressed during pregnancy have also been found to be more likely to experience emotional and cognitive problems, including an increased risk of attentional deficit/hyperactivity, anxiety, and language delay. It is not known what forms of maternal stress or anxiety are most detrimental but studies suggest that the relationship with the partner can be important (Talge et al., 2007).

### *Secondary and ambiguous loss*

In addition to the trauma caused by the separation of the child from the caregiver, children and parents also experience secondary and ambiguous loss. Secondary loss describes the additional losses a person might experience above and beyond the grief of missing the loved one; for example loss of security, loss of income, or loss of ambition. Ambiguous loss describes loss in which either a parent is physically absent and emotionally present or emotionally present and physically absent. Object relations theory focusses primarily on the mother-child relationship within nuclear family structures and therefore has been criticised as having a Western cultural bias (Suárez-Orozco, Todorova, & Louie, 2002). This constrains its use for understanding the effects of disruption of early attachment on families where caregivers are included in the extended family, with multiple significant relationships for a child. Where migrant families have been separated, the focus is on the secondary loss of routines and financial and emotional security that can accompany separation from the caregiving individual (Suárez-Orozco, Todorova, & Louie, 2002). These secondary losses can play a significant role in adaptation, which can be relevant both to children left behind when parents migrate as well as to those who reunite with parents in a receiving country following a period of separation. In addition, children leaving substitute caregivers to rejoin parents who have migrated can experience loss of attachment to the caregiver, formed in the parent's absence (Dreby, 2007).

Shapiro (1994) found that it is not only the individual subjective response of the child to the separation of the parent that determines how separation and loss affect children, but also the reactions of the family and wider community. Where children are unable to express their own sadness or anger the resolution of their grief is protracted. In reconstructing the meaning of the loss and trauma, individuals and families are required to seek new values in what remains after the loss. Sluzki (1992) found that stress and family conflict are an almost unavoidable by-product of relocation because the social network of the family is severely disrupted at the same time as the emotional needs of family members increase. This further emphasises the importance of the role of wider networks and their response when children are separated from a parent. Furthermore, a lack of a defined time period for the absence of the separated parent, or a longer period of separation than had originally been anticipated, can add to the lack of resolution, manifesting as a low-grade chronic symptomology rather than eliciting an intense, acute and more easily recognisable response from the child. Boss (1999) suggests that 'ambiguous loss' can result in a lack of recognition of a child's loss. The silence surrounding it thereby restricts a child's ability to grieve (Doka, 1989). The lack of a defined time period for the absence of the separated parent within the immigrant family can add to this lack of resolution.

### *Conclusion*

As the literature demonstrates, separation from a parent often results in long- and short-term negative behavioural and developmental consequences for children. From a review of the literature, it is clear that the separation of parent and child and the distress caused to children and their families cannot be in the best interests of children and should therefore be avoided by policy makers in all but the most serious cases.

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### **Appendix E – Should the income threshold vary by region?**

In its report on the minimum income threshold, the Migration Advisory Committee said that it had not examined the case for regional variations in the income threshold in any depth.<sup>184</sup> However, its response to suggestions that, as expenditure on housing benefit is less in cheaper regions, there should be a regional variation in the minimum income requirement was that they could not see a clear case for this. They gave four reasons:

- Public spending is higher in regions with a lower cost of living;
- Regional variations might incentivise sponsors who don't earn enough to move temporarily to a cheaper region;
- A family that moved for reasons unconnected with the maintenance threshold might be unfairly advantaged or disadvantaged;
- Regional variations do not take account of pockets of wealth or poverty so might have some perverse results.<sup>185</sup>

Given the difficulties that the rule has caused to those living in poorer regions of the UK, the case for regional variation deserves more attention. The table below shows a correlation between earnings, the cost of living (excluding housing) and housing costs so families living in less well paid regions will both be able to live on less and will have lower housing costs (and lower housing benefit claims). The survey contained examples of individuals who, because house prices are lower in low wage regions, had relatively low earnings but owned their property outright.

There is also a correlation between both public expenditure and the cost of living, and public expenditure and earnings in each region so that those living in wealthier regions with higher costs tend to have less spent on them for every pound earned (although this does not always hold true as the figures for Scotland, for instance, show). The MAC's first concern therefore has some validity but it seems to be a minor issue in the overall context. There does not seem to be a strong case for arguing that what is, in effect, a higher threshold should apply in low cost, low wage regions just because migrants may, despite having shown self-sufficiency through the probationary period, receive more expensive public services than elsewhere.

The MAC's other concerns do not seem to be to be substantial. If people move to a different region, they will usually receive local wages. On the contrary, having a single income threshold creates a greater perverse incentive as someone from a low wage region could move to a higher wage region to qualify. As the income requirements have to be met on three occasions over a five year period, the scope for moving back and forth within the UK to take advantage of regional differences, as the MAC has suggested might happen, is anyway limited given the cost and disruption of moving. It is true, as the MAC observes, that regional differences cannot take account of variations within a region but a rigid national minimum seems to be the greater injustice and it is likely to be easier to move within a region to access higher wages than between regions.

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<sup>184</sup> *Review of the Minimum Income Requirement* n.18 above p.58.

<sup>185</sup> *Ibid* p.58.

This report favours a substantial reduction in the minimum income threshold. To the extent however that this does not happen, there is a strong case for ensuring that the threshold is established in a way that recognises regional variations in both pay and the cost of living.

Region	Median Gross Annual Earnings 2013 in £ <sup>186</sup>	Position in table of earnings (low to high)	Regional price levels in 2010 (excluding housing) against UK average (=100) <sup>187</sup>	Position in table of regional price levels (low to high)	Weekly housing costs (net of housing benefit) 2013 in £ <sup>188</sup>	Position in table of weekly housing costs (low to high)	Public Expenditure per head 2013/4 in £ <sup>189</sup>	Position in table of public expenditure per head (high to low)	Ratio Earnings/Public Expenditure (rounded to second decimal point)	Position in table of ratio earnings/public expenditure (high to low)
North East England	24,084	2	98.2	=3	96.50	2	9,576	5	1: 0.40	4
North West England	25,097	6	98.2	=3	121.10	6	9,276	6	1:0.37	6
Yorkshire and Humber	24,954	5	97	1	120.60	5	8,679	7	1:0.38	5
East Midlands	24,918	4	99.4	5	134.50	8	8,219	10	1:0.33	=8
West Midlands	25,341	8	100.6	9	117.10	4	8,641	8	1:0.34	6

<sup>186</sup> *Patterns of Pay Reference Tables 1997-2013* Office for National Statistics (2013) Table 11

<sup>187</sup> *UK Relative Regional Consumer Price levels for Goods and Services for 2010* Office for National Statistics (2011) p.11

<sup>188</sup> *Housing Expenditure by UK Countries and Regions, 2013* Office for National Statistics (2014)

<sup>189</sup> Keep, M. *Public expenditure by country and region* House of Commons Library Briefing Paper No. 04033 19<sup>th</sup> May 2015.

East England	26,483	10	101.2	10	160.00	9	7,950	11	1:0.30	10
London	35,238	12	107.9	12	206.90	12	9,866	4	1:0.28	11
South East England	28,400	11	102.3	11	186.30	10	7,756	12	1:0.27	12
South West England	25,251	7	99.5	7	184.80	11	8,336	9	1:0.33	=8
Wales	24,182	3	98.4	6	113.10	3	9,924	3	1:0.41	3
Scotland	26,472	9	99.7	8	124.50	7	10,275	2	1:0.48	1
Northern Ireland	23,904	1	98.1	2	81.00	1	10,961	1	1:0.46	2

## **Appendix F – Immigration statistics**

This Appendix considers the evidence of the published immigration statistics in respect of the financial requirements. While the data is extensive, it is not easy to show the effects of particular changes, particularly in family migration where there have been several changes in the past few years. In addition, the reason for refusal is not recorded and data is only available for the migrant, not the British sponsor nor, usually, any affected children as they are almost always British citizens or settled residents. There is also a time lag between a change and any impact on the number and profile of successful applicants as applications take several months to process. However, this Appendix draws out the evidence that is available.

Partners form the largest single group of long-term migrants to the UK.<sup>190</sup> This is not unusual in Europe; family migration represented around one half of legal migration into the EU in the early 2000s and one third in 2011.<sup>191</sup> The motivations for and patterns of spousal migration vary enormously and any attempt at categorisation must recognise the fluidity and indeterminacy of actual migration compared to the rigidity of visa routes and official statistics.<sup>192</sup>

In the past, marriages with migrants in the Indian sub-continent have been the main focus of policy. However, while these remain important, recent statistics underscore the variety of countries from which partners may enter and, as discussed below, some of these less well-known groups have been particularly affected by the income requirement. Home Office statistics document over 70 countries of origin of spousal migrants to the UK. Spousal migrants have traditionally been predominantly female and this continues to be the case.<sup>193</sup> The recent statistics show an even wider range of countries of origin.

The numbers of spousal migrants has been falling since 2006 and this is likely to have been accelerated by the implementation in 2010 of a pre-entry language test. However, even taking these factors into account, it is probable, as the Impact Assessment predicted, that the introduction of the financial requirements has had an impact on the numbers of successful applicants and on some applicants more than others.

The Impact Assessment for the 2012 changes predicted a decrease in the number of visa grants of between 13,700 and 18,500.<sup>194</sup> In fact, numbers have decreased by less than that. Numbers had already fallen sharply after the pre-entry language test was introduced in 2010 but these would have recovered to some degree as applicants passed the test and applied for entry. However, those who did so and applied after 9<sup>th</sup> July 2012 would then have been caught by the financial requirements. Looking only at the difference between 2012 and subsequent years is likely to understate the reduction in visa grants due to the

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<sup>190</sup> 'Marriage-Related Migration to the UK' n.169

<sup>191</sup> European Commission (2011) *Green Paper on the right to family reunification of third country nationals living in the European Union (Directive 2003/86/EC)* COM (2011) 735 final p. 1.

<sup>192</sup> 'Marriage-Related Migration to the UK' n.169; Kofman, E. (2004) 'Family-related migration: A critical review of European studies', 30 *Journal of Ethnic and Migration Studies* (2004) 243–262

<sup>193</sup> 'Marriage-Related Migration to the UK' n.169.

<sup>194</sup> *Impact Assessment* n.12 above p. 4.

financial requirements. On the other hand, a small proportion of the post-2012 reduction may have been due to other contemporaneous changes such as new controls on sham marriages.

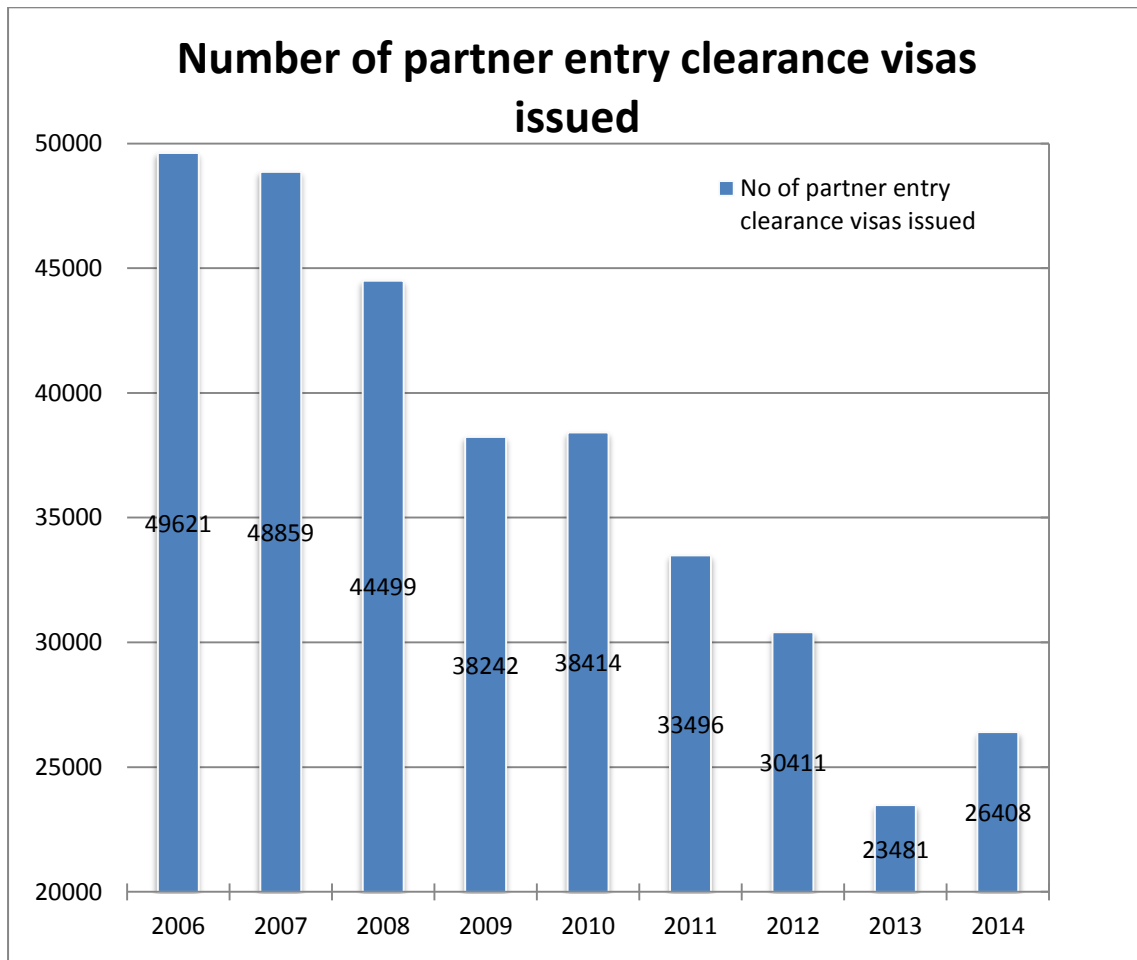
Table 1 shows the total number of partner entry clearance visas issued each year since 2006 with the same information shown in graph form in Figure 1. There is a consistent pattern of falling numbers of successful applications but including a large drop after 2012. There is a partial recovery in 2014 but overall numbers are still much lower than they were.

**Table 1**

<b>Number of partner entry clearance visas issued each year (2006 - 2014)</b>		
<b>Year</b>	<b>No. of partner entry clearance visas issued</b>	<b>% change from previous year</b>
2006	49621	
2007	48859	-1.5%
2008	44499	-8.9%
2009	38242	-14.1%
2010	38414	0.4%
2011	33496	-12.8%
2012	30411	-9.2%
2013	23481	-22.8%
2014	26408	12.5%

Source: Home Office, Immigration Statistics January – March 2015 Table vi\_06\_q\_f

Figure 1



A fall in successful applications may be the result of a drop in applications, an increase in refusals or both. Commonly, the refusal rate increases when a new policy is implemented and then the numbers of applications drop as people begin to appreciate the nature of the new regime. There is then often a partial recovery as those who can meet new requirements, submit applications. This seems to have been the case in respect of the income requirement.

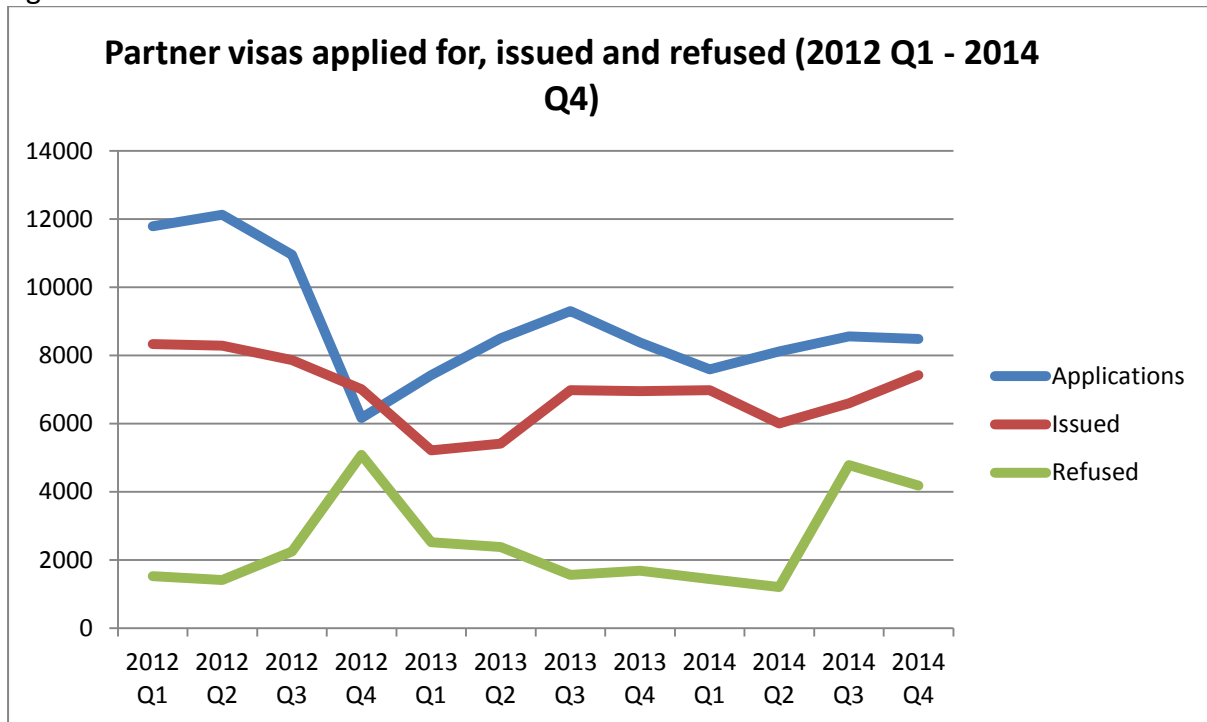
Table 2 shows the applications, grants and refusals from the beginning of 2012 with the same data in graph form in Figure 2. This shows that the refusal rate in some quarters is very high indeed and that the overall refusal rate during the entire period is 26.9%.



**Table 2**

Partner visas applied for, issued and refused (2012 Q1 - 2014 Q4)							
Time period	No. of partner applications made	Change in no. of partner applications made from previous quarter	No. of partner visas issued	Change in no. of partner visas issued from previous quarter	No. of partner visas refused	Grants and refusals	Refusal rate (refusals as a % of issues and refusals combined)
2012 Q1	11,409		8,021		1,471	9,492	15.5%
2012 Q2	11,797	3.4%	7,984	-0.5%	1,381	9,365	14.7%
2012 Q3	10,639	-9.8%	7,626	-4.5%	2,215	9,841	22.5%
2012 Q4	5,885	-44.7%	6,780	-11.1%	5,008	11,788	42.4%
2013 Q1	7,025	19.4%	4,851	-28.5%	2,469	7,320	33.7%
2013 Q2	8,289	18.0%	5,260	8.4%	2,323	7,583	30.6%
2013 Q3	9,002	8.6%	6,695	27.3%	1,532	8,227	19%
2013 Q4	8,066	-10.4%	6,675	-0.3%	1,654	8,329	19.9%
2014 Q1	7,358	-8.8%	6,807	2.0%	1,409	8,216	17.15%
2014 Q2	7,910	7.5%	5,862	-13.9%	1,200	7,062	17.0%
2014 Q3	8,384	6.0%	6,452	10.1%	4,763	11,215	42.5%
2014 Q4	8,308	-0.9%	7,287	12.9%	4,172	11,459	36.4%
All quarters	104,072		80,300		29,597	109,897	26.9%

Figure 2

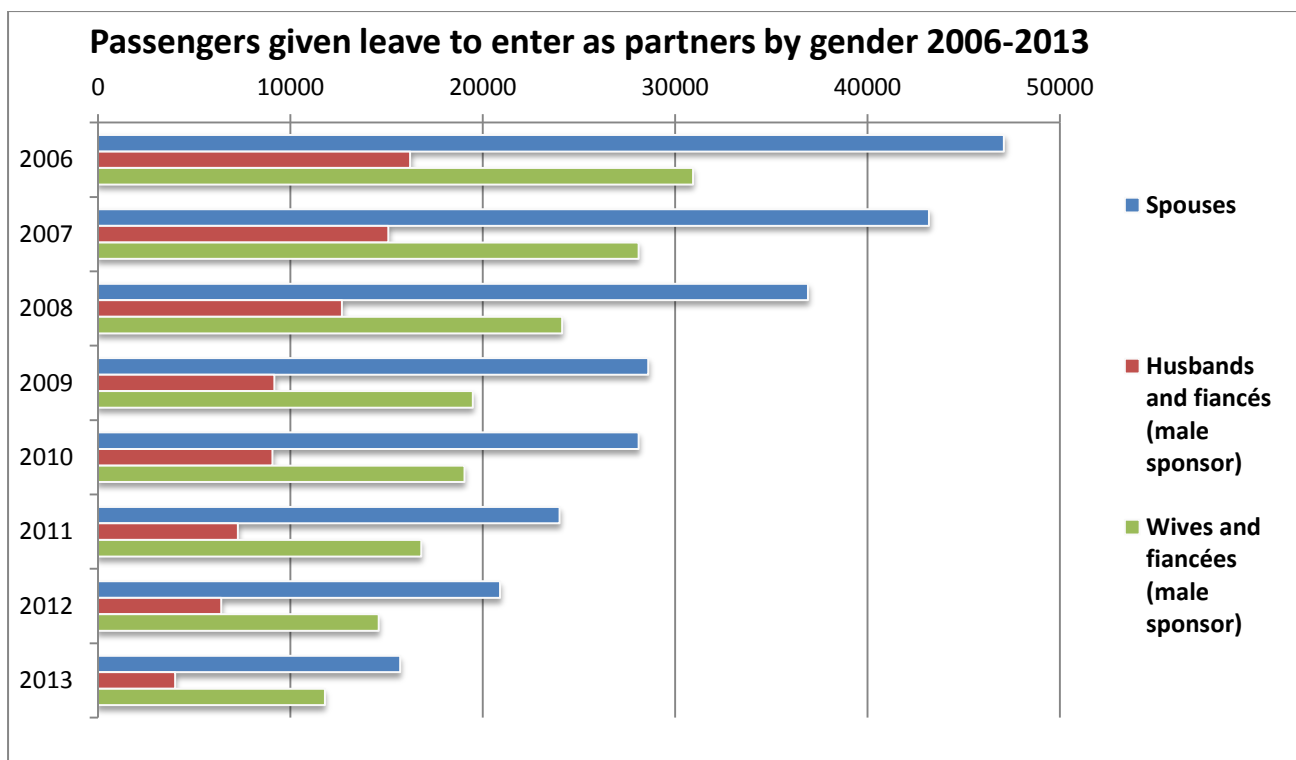


There have always been more male than female sponsors and more wives than husbands entering the UK. Table 3 and Figure 3 suggest that this has been exacerbated by implementation of the minimum income requirement, with the decrease in the number of female sponsors accelerating after introduction of the minimum income requirement, presumably reflecting the increased difficulty women face in meeting the requirement. As women are more likely to be looking after any children in a relationship, it is likely that the greater reduction in successful female sponsors has also disproportionately affected children living in the UK.

**Table 3**

Passengers given leave to enter as partners by gender 2006-2013							
Year	Partners	Husbands and fiancés (i.e. female sponsor)	Wives and fiancées (i.e. male sponsor)	Numerical change in husbands and fiancés from previous year	Numerical change in wives and fiancées from previous year	% change in husbands and fiancés from previous year	% change in wives and fiancées from previous year
2006	47100	16220	30930				
2007	43200	15080	28110	-1140	-2820	-7.0%	-9.1%
2008	36900	12680	24130	-2400	-3980	-15.9%	-14.2%
2009	28600	9160	19490	-3520	-4640	-27.8%	-19.2%
2010	28100	9065	19050	-95	-440	-1.0%	-2.3%
2011	24000	7265	16800	-1800	-2250	-19.9%	-11.8%
2012	20900	6395	14595	-870	-2205	-12.0%	-13.1%
2013	15700	4000	11785	-2395	-2810	-37.5%	-19.3%

Source: Home Office, Immigration Statistics January – March 2015 Table vi\_06\_q\_f. This table does not include civil partnerships or same sex relationships.



The work done for this report has suggested to us that the minimum income requirement is affecting a wide range of migrants, not just those usually associated with spousal migration. This is supported by Table 4 and Figure 4 which show that, while applicants from Asia are still the largest numerical category and numbers show a downward trend (with some fluctuation), other regions have also shown a sustained fall.

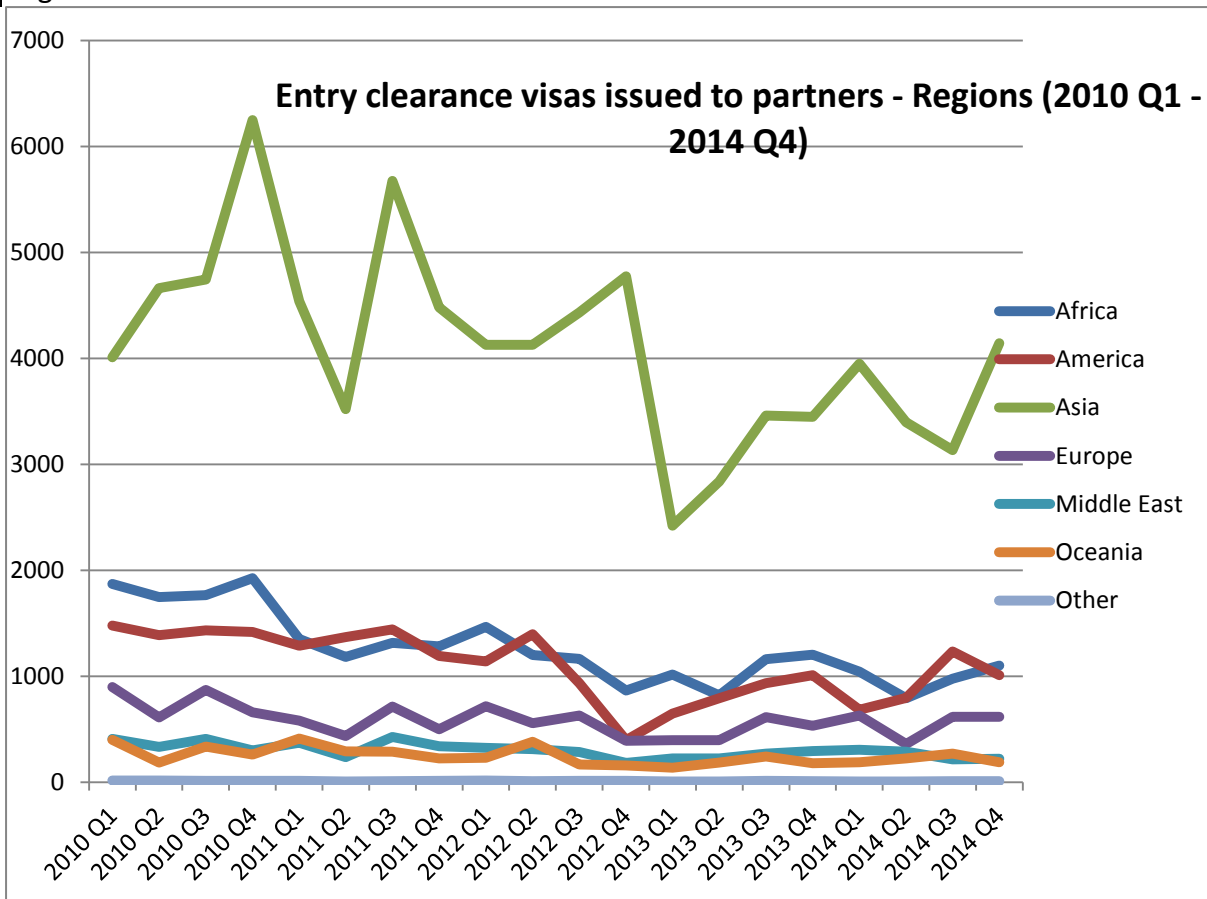
**Table 4**

Entry clearance visas issued to partners - Regions (2010 Q1 - 2014 Q4)							
Quarter	Africa	America	Asia	Europe	Middle East	Oceania	Other
2010 Q1	1871	1477	4010	897	409	399	17
2010 Q2	1746	1387	4661	611	334	184	16
2010 Q3	1766	1432	4745	871	409	335	13
2010 Q4	1926	1417	6250	659	300	260	12
2011 Q1	1350	1287	4539	582	373	412	12
2011 Q2	1183	1369	3520	435	238	290	6
2011 Q3	1315	1443	5675	714	426	288	9
2011 Q4	1282	1191	4482	499	339	225	12
2012 Q1	1466	1139	4129	717	323	232	15
2012 Q2	1200	1398	4128	557	311	381	9
2012 Q3	1164	935	4434	630	284	166	13
2012 Q4	865	396	4775	391	182	158	13
2013 Q1	1017	648	2422	397	224	137	6
2013 Q2	821	791	2837	397	224	184	6
2013 Q3	1161	934	3461	614	269	244	12

2013 Q4	1204	1009	3449	532	293	179	9
2014 Q1	1044	684	3949	629	306	187	8
2014 Q2	791	797	3396	359	288	224	7
2014 Q3	976	1234	3133	616	214	269	10
2014 Q4	1100	1010	4142	616	223	187	9

Source: Home Office, Immigration Statistics January – March 2015 Table vi\_06\_q\_f

Figure 4



## **Appendix G – Legal obligations**

### **International legal obligations**

#### **United National Conventions on the Rights of the Child**

##### *Article 3 (Best Interests of the Child) - Overriding Objective*

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

Committee on the Rights of the Children General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) CRC/C/GC/14 adopted on 29<sup>th</sup> May 2013.

- A substantive right to have the best interests either of a specific child, a group of children, or children generally, considered in all decision-making;
- The principle that, where more than one interpretation of a legal provision is possible, the interpretation which most effectively serves the child’s best interests should be chosen;
- A procedural right to have this evaluation made in a proper manner so that the justification of a decision shows that the right has been explicitly taken into account; how this occurred including what has been considered to be in the child’s best interests; and how the child’s interests have been weighed against other considerations.

##### *Article 2 (Non-discrimination):*

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

##### *Article 4 (Protection of rights):*

States shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

##### *Article 9 (Separation from Parents)*

States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents,

or one where the parents are living separately and a decision must be made as to the child's place of residence.

*Article 10 (Positive, Humane and Expeditious Decisions on Family Reunification)*

In accordance with the obligation of States Parties under Article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

*Article 12 (child's opinion):*

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

*Article 8 of the European Convention of Human Rights:*

- Everyone has the right to respect for his private and family life, his home and his correspondence.
- There shall be no interference by a public authority with the exercise of his right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

## Glossary and Abbreviations

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**Appendix FM** Appendix FM is an appendix to the Immigration Rules (see below) which sets out the requirements for people who want to come to or stay in the UK based on family life with a British citizen, settled person or refugee.

It came into force on 9 July 2012 and replaced part 8 of the Immigration Rules.

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**Appendix FM-SE** Appendix FM-SE is an appendix to the Immigration Rules (see below) which outlines the specified evidence required in applications under Appendix FM to come to or stay in the UK based on family life with a British citizen, settled person or refugee.

**Entry Clearance** Foreign nationals who are subject to immigration control must obtain entry clearance to enter the UK for most purposes, including as the family member of a British citizen or settled resident. Foreign nationals from some countries must obtain entry clearance whenever they enter the UK, however briefly. Decisions on applications for entry clearance are decided by Entry Clearance Officers (see below) who are employed by UK Visas & Immigration (see below). Where entry clearance is granted, an individual will be issued with a visa valid for a certain period of time, which may also contain restrictions on their ability to work or study in the UK.

A person who has entry also needs 'leave to enter' (see below) which is usually granted at the same time as entry clearance. The ultimate decision on entry is made by an Immigration Officer at the port of entry at the port of entry under paragraph 2A of Schedule 2 to the Immigration Act 1971.



**Entry Clearance Manager** Where an application for entry clearance is refused by an Entry Clearance Officer (see below), a person may in certain circumstances request a review of his or her application by an Entry Clearance Manager (called an “administrative review”). Entry Clearance Managers are also UK Visas and Immigration (see below) staff.

**Entry Clearance Officer** An employee of UK Visas and Immigration (see below) who considers visa applications and makes an initial decision on whether entry clearance is granted or refused.

**European Convention on Human Rights (ECHR)** The European Convention on Human Rights (ECHR) (formally the Convention for the Protection of Human Rights and Fundamental Freedoms) is an international treaty to protect human rights and fundamental freedoms in Europe. The main rights contained in the ECHR are binding on government bodies, courts and tribunals under the Human Rights Act 1998.

### **European Economic Area (EEA)**

The EEA (European Economic Area) comprises all the EU member states plus Iceland, Liechtenstein and Norway. By agreement, the free movement rights of EU citizens are extended to nationals of all EEA states. Switzerland is not part of the EEA but has a similar arrangement. EEA nationals therefore do not require entry clearance or leave to enter to live, work and study in the UK.

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**Financial Requirements**

In this report the 'financial requirements' refers to the requirements contained in paragraphs E-ECP.3.1 and E-ECP.3.2 of Appendix FM to the Immigration Rules (see below) for British citizens or settled persons who wish to sponsor a non-EEA family member to live in the UK.

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**Immigration rules (the 'Rules')** The Immigration Rules are rules of practice governing the admission and stay in the UK of non-EEA nationals in the UK. Created under the Immigration Act 1971, they are amended regularly, often a number of times a year.

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**Impact Assessment** Policy Impact Assessments (IAs) are formal, evidence-based procedures undertaken by the UK government that assess the economic, social, and environmental effects of public policy.

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**Indefinite Leave to Remain** Indefinite Leave to Remain refers to the immigration status of an individual where there are no time restrictions on their stay in the UK. A person with Indefinite Leave to Remain and who is ordinarily resident in the UK has settled status

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**Leave to enter** Leave to enter grants a person subject to immigration control permission to enter the UK for a period of time, subject to conditions outlined in the type of 'leave' granted.

The time limit of any Leave to Enter depends upon individual circumstances and is provided to the applicant in person.

Leave to enter is usually granted at the same time as entry clearance but the ultimate decision of entry is made by an Immigration Officer at the port of entry under paragraph 2A of Schedule 2 to the Immigration Act 1971.

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**Leave to remain** The legal condition of a person who has been granted permission to live in the UK for any period of time, subject to any restrictions placed upon them as a condition of their 'leave'.

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**The Income Threshold** In this report, the income threshold refers to the requirement for British citizens or settled persons who wish to sponsor a non-EEA partner to show a gross annual income of at least £18,600 per annum, with an additional £3,800 pa for the first child and an additional £2,400 pa for each additional child who is sponsored (so not children who are British citizens, EEA nationals or settled in the UK).

The conditions for meeting the income threshold are contained in paragraphs E-ECP.3.1 and E-ECP.3.2 of Appendix FM to the Immigration Rules.

**Section 55 duty (s.55)** Section 55 (s.55) of the Borders, Citizenship and Immigration Act 2009 (UK Border Act) implements the Government's legal obligation to treat the best interests of children as a primary consideration (the 'best interests principle') when implementing rules and policies and when making individual decisions involving immigration and nationality. The best interests principle also forms part of the Government's obligations under Article 8, right to respect for private and family life, of the European Convention on Human Rights (ECHR). The s.55 duty applies to all children in the UK irrespective of immigration status and should be applied to children who are abroad but are affected by an immigration decision to refuse them or their parent leave to enter the UK.

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**Settled person** A person who is settled in the UK does not have any restriction on the amount of time they can remain in the UK. There are also no restrictions on work or study in the UK. A person with Indefinite Leave to Remain in the UK and who is ordinarily resident in the UK is a settled person.

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<b>The Sponsor</b>	In this report, ‘sponsor’ refers to a British citizen, refugee, or settled person who is supporting an application by a family member subject to immigration control (such as a non-EEA national) to join them in the UK.
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<b>UK Visas and Immigration (UKVI)</b>	UK Visas and Immigration (formerly part of the UK Border Agency) is a division of the Home Office responsible for making decisions on applications to come to or remain in the UK.
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<b>United Nations Convention on the Rights of the Child (CRC)</b>	The United Nations Convention on the Rights of the Child (CRC) is a human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children. The CRC defines a child as anyone under the age of eighteen.
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<b>APPG</b>	<b>All Party Parliamentary Group on Migration</b>
<b>CRC</b>	<b>United Nations Convention on the Rights of the Child</b>
<b>ECHR</b>	<b>European Convention on Human Rights</b>
<b>ECM</b>	<b>Entry Clearance Manager</b>
<b>ECO</b>	<b>Entry Clearance Officer</b>
<b>EEA</b>	<b>European Economic Area</b>
<b>MAC</b>	<b>Migration Advisory Committee</b>
<b>s.55</b>	<b>Section 55 of the UK Borders, Citizenship and Immigration Act 2009</b>
<b>UKVI</b>	<b>UK Visas and Immigration</b>

## In Country Applications – Inability to meet the financial requirements

Applicant	Case Details	Status in UK	Children	Further reasons for Refusal	EX.1a – Genuine relationship with a British child or child in UK for 7yrs / EX.1b insurmountable obstacles	Exceptional Circumstances / Art. 8	Appeal Outcome
<b>A Female / Philippines</b>	Couple lived abroad including Philippines. Children fell ill there.	Visitor Visa	2 British	Cannot Switch	Not Considered.	Article 8 considered as private life and refused	Allowed under EX.1a and Art 8 citing s.55 and best interest of child
<b>B Female / Philippines</b>	Couple lived together in Philippines for 8 yrs. Sponsor visited UK and fell ill. Could not return to Philippines.	Visitor Visa	2 British	Relationship requirement not met - Not akin to a real marriage for 2 years (incorrect as together for 8 years)	Considered but said does not apply on basis that relationship requirement not met (though incorrect)	Considered by way of one sentence: "It has been decided it does not". No detail given.	Letter before Action citing EX.1, S.55 and Article 8. Leave granted
<b>C Male/ Morocco</b>	Couple lived in Morocco. Sponsor fell ill. Applicant entered on visitor visa. Became carer for wife & child. Her health prevented return to Morocco	Visitor Visa	1 British	Cannot switch. Parent route refused as no sole responsibility	Considered but said does not apply as deemed ineligible	Not considered. Art 8 only looked at private life and refused	Allowed under EX.1a & 1b and Article 8 citing s.55 and best interest of child
<b>D Female / Egypt</b>	Applicant looks after elderly father-in-law. Husband's children in UK	Medical multiple-entry visa	1 British	Cannot switch. Parent route refused as no sole responsibility	Considered but said does not apply as deemed ineligible	Considered by way of one sentence: "It has been decided it does not". No detail given. Private life considered and refused.	Allowed under EX.1a & 1b and Article 8 citing s.55 and best interest of child

**In Country Applications - Inability to meet the financial requirements**

<b>Applicant</b>	<b>Case Details</b>	<b>Status in UK</b>	<b>Children</b>	<b>Further reasons for Refusal</b>	<b>EX.1a – Genuine relationship with a British child or child in UK for 7yrs / EX.1b insurmountable obstacles</b>	<b>Exceptional Circumstances / Art. 8</b>	<b>Appeal Outcome</b>
<b>E Female/ S. Africa</b>	Husband returned to UK to seek employment. Wife came on visit visa with 2 children and sought leave to remain	Visitor visa	2 British	Cannot switch.	Considered but deemed ineligible.	Considered but does not apply as children can leave UK with mother	Unknown
<b>F Female/ Mexico</b>	Lawful 11 month residence in the UK. In time application made for further leave as a spouse and parent.	Lawful leave	1 British	Appendix FM not met	Does not apply, no reason given. Doubt over child's nationality.	Child not reached formative years as aged 2. No reason why she cannot live in Mexico with mother.	Unknown

**Entry Clearance Applications – Inability to meet financial requirements**

Applicant	Case Details	Children	Further Reasons for Refusal	Exceptional Circumstances / Art. 8	ECM Review	Appeal Outcome
Female/ Sudan	Sponsor claimed asylum. Granted ILR under the legacy. Naturalised British	1 British	Lack of financial evidence. Letter from Employer not provided (contract not sufficient)	Not considered	Refusal upheld. No consideration of Art. 8 or S.55	Errors on financial findings. Allowed under Art. 8 having regard to English language & financial independence tests. Both met & crucially CRC and child's potential to suffer FGM. <b>SSH D sought permission to appeal on basis that judge had not identified compelling circumstances. Refused.</b>
Female/ Algeria	Lived in UK for 6 yrs had tried to regularise status but refused. Left UK to apply for entry clearance from Algeria with children. Younger 2 children remain with her. Eldest with father in UK.	3 British	Visit visa overstayed for 6 yrs. Outstanding NHS charges	Not considered	Maintains refusal & states, "I would strongly argue it is not appropriate to raise Art 8"	Refused. Art 8 is engaged and should have been considered but on balance family free to live together in Algeria and can reapply when Sponsor meets the financial threshold.
Male/ Jamaica	Conviction for false papers to work. Deport order but revoked on appeal. In Jamaica for 5 yrs away from wife & children. They had tried to live with him there but couldn't.	2 British	Unspent Conviction	Not considered. On review Art 8 mentioned but no substantive analysis of best interests of children	Considered Art 8. But said nothing stopping wife & children from visiting Jamaica	Allowed under EX1.b and Art 8. As family had tried to live together but sponsor could not get work and child suffered health problems & difficulties at school. Not tenable to suggest parental relationship with dad could be maintained by Skype etc.

### Entry Clearance - Inability to meet the financial requirements

Applicant	Case Details	Children	Further Reasons for Refusal	Exceptional Circumstances / Art. 8	ECM Review	Appeal Outcome
Male/ Ecuador	British wife and 3 year old child. Wife relocated to UK after birth of daughter to be with wider family networks for support. Family separated for 1 year. MP involved in case.	1 British	Insufficient evidence of means	No consideration	Post appeal	We do not have determination but a letter from the HO stating that ECO satisfied sponsor has sufficient income and visa will be issued
Female/ China	Couple married and lived in China for 8 years. Son suffered severe respiratory illness from pollution in China couple decided to move to UK. Wife returned to China to make application with younger daughter. Son in UK with father.	2 British	Cash savings over threshold but no evidence held for full 6 months prior to application (Missing less than one month of evidence) No consideration of Art 8.	Consideration as per ECO review	Considered Art 8. Conclusion: "mother's presence in UK seems immaterial to son's health condition". Children could visit. "Sponsor has chosen to complain about Imm Rules being misapplied...their own actions are attributable to their current circumstances" - "No room for flexibility."	Appeal allowed under EX.1.b and Art 8. S.55 considered not appropriate to keep mother apart from young children (9 months already passed) further application would take many more months and children now settled in UK, disproportionate to force them to move back to China given child's health issues with pollution.





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