BORDER SECURITY, ASYLUM & IMMIGRATION BILL
HOUSE OF LORDS SECOND READING, MAY 2025
New Clause – Duty to have due regard to family unity

NC – Duty to have due regard to family unity

(1) A relevant authority must, in the exercise of relevant functions, have due regard to the need to promote the unity of the family.

(2) Without prejudice to the generality of subsection (1), a relevant authority must, in the discharge of its duty under that subsection, have due regard to-

(a) the public interest in children being properly brought up;

(b) the right of children to be cared for by their parents unless this would be contrary to the child's welfare;

(c) the right of children to have direct contact, in person, with members of their families, unless this would be contrary to the child's welfare; and

(d) the principle that maintaining contact with family members by electronic means of communication is not an adequate substitute for direct contact in person.

(3) This section is subject to section 55 of the Borders, Citizenship and Immigration Act 2009; and nothing in this section requires or authorises a relevant authority to do anything which is contrary to the welfare of any child (whether that child is in the United Kingdom or not).

(4) Nothing in this section-

(a) requires or authorises the Secretary of State or an immigration officer to refuse to grant a person leave to enter or remain in the United Kingdom where they would, apart from this section, have granted such leave; or

(b) requires or authorises the First-tier or Upper Tribunal to find that a ground of appeal under section 84(1)(c) or (2) of the Nationality, Immigration and Asylum Act 2002 is not made out when it would not, apart from this section, have so found.

(5) In this section-

"child" means a person under the age of 18, and "children" shall be construed accordingly;

"relevant authority" means-

(a) the Secretary of State;

(b) the First-tier Tribunal; and

(c) the Upper Tribunal; and

"relevant functions" means-

(a) any function of the Secretary of State in relation to immigration, asylum or nationality;

(b) any function conferred by or by virtue of the Immigration Acts on an immigration officer;

(c) any function of the First-tier or Upper Tribunal in connection with the determination of any ground of appeal under section 84(1)(c) or (2) of the Nationality, Immigration and Asylum Act 2002."

Explanatory statement
This Clause imposes a duty to have due regard to the unity of the family in the exercise of immigration, asylum and nationality functions. It applies to the Secretary of State and immigration officers in exercising immigration, asylum and nationality functions, and to the First-tier and Upper Tribunals in deciding human rights appeals.

BRIEFING:

Purpose

The proposed New Clause would impose a duty on the Secretary of State, immigration officers and the Tribunal, in the exercise of "relevant functions"[1], to have "due regard" to the need for family unity. The clause does not compel particular outcomes, but prescribes relevant considerations that must be taken into account, namely:

a) the public interest in children being properly brought up;
b) the right of children to be cared for by their parents unless this would be contrary to the child's welfare;
c) the right of children to have direct contact, in person, with members of their families, unless this would be contrary to the child's welfare; and
d) the principle that maintaining contact with family members by electronic means of communication is not an adequate substitute for direct contact in person.

The New Clause is specific to immigration, asylum and nationality functions, and is not intended to affect or influence family proceedings or other areas of policy.

Families separated by the UK immigration system

The UK immigration system splits up too many families, through a variety of rules and mechanisms. This directly results in harm caused to children,[2] despite the Home Office's existing duty to safeguard and promote the welfare of children in the UK.[3] A recent House of Lords Committee report found that separation from parents 'can adversely impact children's language learning, school attainment and longer-term educational and labour market performance,'[4] demonstrating the multiple and complex ways that family separation harms children.

One of the most significant areas of the UK immigration system where children are divided from a parent by the state is the family migration rules. There is almost no flexibility in the application of a strict financial test for family migration, with the Minimum Income Requirement (MIR) for a British or settled person to sponsor their partner to come to the UK set at £29,000 - a level that would exclude

[1] The New Clause defines "relevant functions". This section applies to the Secretary of State's immigration, asylum and nationality functions, and the functions of immigration officers under the Immigration Acts. This section also applies to the First-tier and Upper Tribunals when they are deciding statutory immigration appeals which are brought on human rights grounds. It will not directly apply to the Upper Tribunal in the exercise of its judicial review jurisdiction, but the Upper Tribunal will be able to entertain claims for judicial review brought on the ground that the Secretary of State has not performed her duty under this section.

[2] See Coram and Reunite Families UK, *How spouse and partner migration rules affect the mental health and wellbeing of children*, 2024; Bail for Immigration Detainees (BID), *Excessively cruel: Detention, deportation & separated families*, 2021

[3] Section 55, Borders, Citizenship and Immigration Act 2009

[4] House of Lords Justice and Home Affairs Committee, *All Families Matter: An Inquiry Into Family Migration*, 2023

much of the British public.[5] Indeed, in the then-government's own impact assessment of the increased MIR in spring 2024, they reflected that 'none are assumed to qualify' for visas under exceptional circumstances from abroad as it is a 'hard test to meet'.[6] No Child Rights Impact Assessment was undertaken.

In practice since the adoption of the MIR in 2012, the rules have led to significant numbers of children – including British children – growing up forcibly separated from their parent, with profound impacts on children. In research for Reunite Families UK, Coram Impact & Evaluation undertook interviews with children affected by the family migration rules and found that:

- Children felt that separation had negatively affected their relationship with the non-resident parent/s.
- The minimum income requirement caused children worry, stress, uncertainty and anxiety.
- Children reported feelings of sadness, guilt and loneliness due to the stress and separation caused by the minimum income requirement.
- Children spoke about how having a stressful family situation could affect school and making friends.
- Children told us about how growing up in a family affected by spouse and partner visa rules impacted their sense of identity.

CASE STUDY: Family separation due to family migration rules

A Welsh man and his partner have been together for 10 years. He returned to the UK to provide full time care for his elderly mother.

'My mother was very sick and needed care and I was the only one able to provide that care, so I returned to the UK with my 4-year-old son to take care of her, and my wife returned home while we arranged a visa for her to join us. The process never started because we are unable to meet the financial requirements. Having lived outside the UK for many years and only returning recently, I was unable to qualify for carers allowance even though it is accepted that I am a carer. Without a carers allowance, I am unable to find the funds required to sponsor my wife. Both my son and I have had significant health issues as a result of this separation. My health deteriorated so badly that I was hospitalised for 5 days, my son was also in hospital twice last year.'[7]

As well as the family migration rules, other parts of the UK's immigration system fail to uphold the importance of family unity and the children's right to be cared for by their parent. Some of these areas include rules on dependants (including dependants of students and care workers), the refugee family reunion rules, and Immigration Enforcement and Tribunal decision-making on removals and deportations of parents – including parents of British children.

Many families are separated by decisions made to remove or deport parents from the UK, many of whom are long-term British residents. To challenge deportation on the basis of family life an individual must prove that they either have a 'genuine and subsisting' relationship with a 'qualifying partner' or a 'genuine and subsisting parental relationship' with a 'qualifying child' who would experience the deportation as 'unduly harsh'. The Home Office has previously interpreted 'unduly harsh' as

[5] Migration Observatory at the University of Oxford: "Family fortunes: The UK's new income requirement for partner visas" available at "https://migrationobservatory.ox.ac.uk/resources/commentaries/family-fortunes-the-uks-new-income-requirement-for-partner-visas/

[6] https://www.gov.uk/government/publications/changes-to-immigration-rules-impact-assessments/2024-spring-immigration-rules-impact-assessment-accessible#fnref:60

[7] Reunite Families UK, *Families Belong Together,* December 2024

'excessively cruel'[8] – that is, **deportation law permitting cruelty to children** provided that such cruelty is not 'excessive'. Current policy refers to case law, quoting: 'Harsh in this context, denotes something severe, or bleak, and is the antithesis of pleasant or comfortable. Furthermore, the addition of unduly raises an already elevated standard still higher.'[9]

Unlike a criminal sentence, deportation can effectively and summarily end a child and a parent's family life for the entire duration of a child's childhood. As such the permanent outcome of ending family life can have a long-term negative impact on a child's upbringing including their education and social behaviour, and the subsequent impact this can have on have on communities and society as a whole.

CASE STUDIES: Family separation due to deportation rules

A father of three was facing deportation and was in immigration detention without legal representation. His wife, struggling as the sole caregiver, was also managing his legal case alone. BID were able to secure bail and eventually win his case, but without BID's intervention, he could have remained in detention without legal support, potentially leading to deportation and the separation of his family.

An EU citizen who had lived in the UK for 24 years was given a 7-day sentence for driving without insurance. At the time his partner was heavily pregnant. He was in detention for more than three months, and his baby was born while he was in detention, a key family milestone which he was forced to miss.[10]

As these cases make clear, the impact of individual immigration, asylum and nationality decisions is huge in a child's life, with the practical effect of separating a child from their parent. The proposed new duty to have regard for the need for family unity seeks to increase consideration of children's rights to be cared for by their parents, as well as the public interest in family unity, in the exercise of immigration, asylum and nationality functions.

> *'Taking a child away from her family is a momentous step, not only for her, but for her whole family, and for the local authority which does so… Families in all their subversive variety are the breeding ground of diversity and individuality. In a free and democratic society we value diversity and individuality. Hence the family is given special protection… As Justice McReynolds famously said in Pierce v Society of Sisters 268 US 510 (1925), at 535, "The child is not the mere creature of the State'*
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> Baroness Hale, House of Lords, In In Re B [2009] 1 AC 11 at [20]

<u>The public interest in family unity</u>

Family life and children's upbringing are often posited as *private rights* set against the *public interest* in economic wellbeing or immigration control. However, there is wide recognition of a national public interest in preventing the forcible division of families. As Lady Hale wrote in a judgment in a 2012 Supreme Court case: 'although the child has a right to her family life and all that goes with it, there is also a strong public interest in ensuring that children are properly brought up'.[11]

Recognition of the public importance of family life is seen in the cross-government Family Test, designed to promote the tenet that 'healthy and strong relationships are also recognised as an

[8] See for example. Home Office policy 'Criminality: Article 8 cases' Version 6.0, Published 22 February 2017 at page 11: where it states at page 13: "When considering the public interest statements, words must be given their ordinary meanings. The Oxford English Dictionary defines 'unduly' as 'excessively' and 'harsh' as 'severe, cruel'."

[9] See Home Office policy 'Criminality: Article 8 cases' Version 9.0, Published 9 May 2024 at page 14.

[10] Both case studies are past clients of BID.

[11] UK Supreme Court, 2011 https://childrenslegalcentre.com/wp-content/uploads/2017/01/uksc-2011-0129-judgment.pdf

important component of individual, community and national wellbeing'[12] in all domestic policy. Then Prime Minister David Cameron said upon introducing the Test, 'if we want to have any hope of mending our broken society, family and parenting is where we've got to start.'[13]

Children's right to be cared for by their parents

Under the UN Convention on the Rights of the Child, children have a right to be cared for by their parents unless this would be contrary to their welfare. They have a right to have direct contact, in person, with members of their family, unless this would be contrary to their welfare.

> *States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.*
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> Article 5, UN Convention on the Rights of the Child
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> *The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.*
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> Article 7, UN Convention on the Rights of the Child

Electronic means of communication as inadequate

It is widely recognised that electronic means of communication are not an adequate substitute for direct contact in person. There are multiple barriers to accessing electronic communications – from costs, to stable Internet connection in countries to which parents may be returned. Regardless of logistical access to modern means of communication, a video or phone call cannot replicate the physical and emotional impacts of in-person presence. The House of Lords Committee *All families matter* report evidences this issue extensively, concluding that 'as Families for Justice told us, the experience of the Covid pandemic taught us there was "no substitute" for a hug, "one human being embracing another human being"'.[14]

CASE STUDY: The impact of electronic communications on filial relationships

A British mum talking about the impact the separation between their daughter and her husband whilst she was working to meet the MIR.

'The MIR meant that my daughter never got to make that childhood bond most kids have with their parents. She had a Skype father. Their relationship is still strained and struggling because she doesn't understand his culture and ways because she didn't grow up with him. It will take years to form that bond and trust that growing up and developing together produces.'

Suggested questions for ministers

1) Can the government confirm its commitment to promoting family unity for all children in the UK?
2) Can the government confirm its belief that there is national public interest in preventing forcibly divided families?

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[12] House of Commons Briefing Paper, *The Family Test,* April 2019 https://researchbriefings.files.parliament.uk/documents/CBP-7714/CBP-7714.pdf

[13] *Ibid.*

[14] House of Lords Justice and Home Affairs Committee, *All Families Matter: An Inquiry Into Family Migration*, 2023