**Written evidence submitted to the Immigration and Social Security Coordination (EU) Bill Commons Committee by the Refugee and Migrant Children’s Consortium**

**21 February 2019**

**Key messages**

* This Bill’s primary aim is to end free movement with the European Union and thus make European nationals and those with rights derived from EU law subject to the UK’s immigration system including children, young people and families. The Refugee and Migrant Children’s Consortium believes that in its current form the Bill is a **missed opportunity to fundamentally reshape, simplify and improve** the current asylum and immigration system. The Windrush scandal should have motivated a fundamental shift in direction to a system based on transparency, accountability, led by evidence, effective policy solutions and rooted in direct experiences of its users including children. Above all we should be seeking to build a future immigration system which reflects **Britain’s respect for fairness, human rights and dignity** and ensure that it provides **sufficient protection for all vulnerable children, young people and families in this country**.
* The Bill makes no provisions to address the existing problems in the UK immigration system, but instead gives Ministers broader ‘Henry VIII’ powers to introduce wide-ranging changes to the immigration system without substantive oversight and **without assessing the impact that these will have on children’s rights**.
* A failure to secure European children’s status in the UK will leave thousands more in a precarious position, unable to access social security, study or work as they transition into adulthood. Thousands of children in the UK already living with a precarious status face destitution, exploitation and social exclusion, and **knowingly subjecting thousands more children would be unconscionable and contrary to our domestic and international obligations to children’s welfare and rights**.
* Following Brexit, European nationals coming to the UK will be **subject to our existing, adversarial immigration system** and, without further safeguards, will risk being barred from accessing mainstream benefits and other vital services, being subjected to the **exorbitant immigration, settlement and citizenship fees** and other hostile immigration policies perpetuated by successive governments to repel undesirable migrants from the UK.
* We believe that a fair and humane immigration system which effectively tackles irregular migration needs accessible and affordable routes to regularisation for European and non-European citizens by **providing good quality free legal advice and representation for children and families who can’t afford it, rights of appeal, affordable fees or waivers and making** **routes to settlement shorter and simpler so that children are not trapped in poverty throughout their childhood**.
* We also need a **systematic process which comprehensively assesses the best interests of each child** affected by immigration decisions including substantive protection claims and any decisions to remove children or their parents from the UK. If we are to truly protect the rights of children, these safeguards must be available for all children who are caught up in the asylum and immigration system including those who will have to go through the EU settlement scheme, other immigration routes and refugee family reunion cases.

**Introduction**

1. By this submission the Refugee and Migrant Children’s Consortium, a coalition of over 50 organisations[[1]](#footnote-1) working collaboratively to promote the rights of refugee and migrant children and young people in the UK, wishes to demonstrate to the committee the potential risks that come with the proposed changes to the UK immigration system in the Immigration and Social Security Co-Ordination (EU Withdrawal) Bill. We also make a number of recommendations for safeguards that could be put in place.
2. The UK’s complex and adversarial immigration system developed under successive governments, including the policies set out under the ‘hostile environment’ agenda, have not in our view been effective either in tackling irregular migration nor in alleviating public concerns about immigration. Instead, as the Windrush scandal makes clear, these policies have jeopardised the health, safety, welfare and livelihoods of thousands of individuals and families including many who came here as children or were born here, have grown up here and know no other home. As set out in our submission to the Windrush review, over the years the consortium and its members have continued to highlight the dangers that face undocumented children in the UK[[2]](#footnote-2). Without the necessary safeguards put into place, bringing an additional 3-4 million people into this system comes with an unprecedented risk to wellbeing, putting vulnerable European residents in the UK – among them hundreds of thousands of children and young people – at significant risk.
3. Whilst we understand that the Bill’s main objective is to repeal freedom of movement and associated rights, in providing a framework to deliver the future immigration system the Refugee and Migrant Children’s Consortium believes that in its current form the Bill is a missed opportunity to fundamentally reshape, simplify and improve the current asylum and immigration system. The Windrush scandal should have motivated a fundamental shift in direction to a system based on transparency, accountability, led by evidence, effective policy solutions and rooted in direct experiences of its users. Above all we should be seeking to build a future immigration system which reflects Britain’s respect for fairness, human rights and dignity.

**Ensuring children’s rights are considered when developing immigration law and policy**

1. The UK’s future immigration system and associated policies will primarily be implemented through Immigration Rules as is currently the case for non-EEA nationals (Clause 1 and Schedule 1 which will mean that those exercising EU rights will no longer be exempt from requiring leave to enter or remain). In addition, Clause 4 of this Bill gives Ministers extremely broad ‘Henry VIII’ powers to make regulations that modify legislation regarding free movement and the wider immigration system.
2. Determining immigration policy through the Immigration Rules allows the Home Office to unilaterally change immigration rules with little to no scrutiny, input from civil society, assessment of impact on children’s and other vulnerable people’s rights or parliamentary approval. With the powers under Clause 4, we fear that the Bill grants Ministers additional means by which to create immigration policy that negatively impacts on children and young people who are subject to immigration control without appropriate checks and balances. Through our direct work with children and young people, RMCC members often see how immigration rules are incompatible with children’s rights and one of the only ways to address unlawful policy which contravenes children’s rights on the part of the Home Office is through legal challenge.
3. Children’s rights were debated extensively during the passage of the EU (Withdrawal) Bill in 2018, with a number of RMCC members calling for an explicit provision in primary legislation requiring Ministers and other public officials to have due regard to the UN Convention on the Rights of the Child (UNCRC) in implementing, amending or repealing law and policy. Domestically, no explicit constitutional commitment to children’s rights exists at a central UK government level. By comparison, in Wales, the Rights of Children and Young Persons (Wales) Measure 2011 imposes a duty on all public officers to have due regard to children’s rights as expressed in the UNCRC when exercising any of their functions. To achieve that obligation, since 2012 the Welsh Government routinely undertakes Child Rights Impact Assessments on proposals for Welsh law or policy which will affect children directly or indirectly.[[3]](#footnote-3)
4. In November 2018, the Minister for Children reiterated the government’s commitment to ‘*give due consideration to the UNCRC articles when making new policy and legislation*’[[4]](#footnote-4), reaffirming ‘*the value that this Government places on the UNCRC*’.[[5]](#footnote-5) At the same time, the Department for Education launched a training package, co-drafted with several RMCC members, for civil servants on children’s rights and how to undertake Children’s Rights Impact Assessments. Both of these steps are welcome and therefore we were disappointed to see that the Home Office had not published a Children’s Rights Impact Assessment for the Bill or the White Paper when they were published in December 2018. Furthermore, the Home Office has made no commitment to do so through the 12-month long consultation programme announced for the White Paper, despite a clear indication that the new emerging legislation will have a profound impact on our current immigration system. We are also disappointed to learn from the DfE that of the 82 civil servants that have so far undertaken the training, not one of those civil servants was from the Home Office.[[6]](#footnote-6)
5. During the passage of the EU (Withdrawal) Bill, the Government also reiterated that children’s rights are already protected under domestic law and therefore do not need further protection. We disagree. As indicated by Baroness Butler-Sloss during the Lords debate, the child rights protection measures found in the Children Act 1989, the Adoption and Children Act 2002, and Children Act 2004 do not encompass the full range of children’s rights contained in the UNCRC, but rather an obligation to ensure that where certain children are at risk, they are protected. Section 55 of the Borders, Citizenship and Immigration Act 2009 has for a decade now required that immigration authorities discharge their functions having regard to the need to safeguard and promote the welfare of children who are in the UK, but has not resulted in an embedded consideration of children’s rights when the Home Office develops law and policy.
6. To give an example, last October, Baroness Lister highlighted that no child rights impact assessment had been published of the increase to fees for children’s citizenship applications, asking: *‘How can the Government meet their duty under the UN Convention on the Rights of the Child to give primary consideration to the best interests of the child when they fail to provide that assessment of the ‘huge’ registration fee, to quote the Home Secretary? It effectively denies children born in this country their statutory right to citizenship, thereby undermining their sense of security, identity and belonging, and potentially creating a new Windrush generation.’* The government’s response was to state that it has assessed ‘*the impact of fee changes not on the individual applicant, but rather on the UK as a whole*’, completely disregarding the commitment to consider children’s rights directly.[[7]](#footnote-7)
7. We believe that a Child’s Rights Impact Assessment would also help the government to better understand and anticipate how children and families are likely to be impacted by its policies and thus put in place measures to mitigate these effects.

***Recommendation 1: Before any changes to the UK’s immigration system are made, the Home Office must undertake a rigorous Child’s Rights Impact Assessment.***

***Recommendation 2: The proposed Henry VIII powers should either be removed or given a time limit so that they may only be used until the end of 2019 in order to make the amendments necessary for delivering an orderly Brexit, but will not be able to be used to by-pass Parliament’s legislative function to create a new immigration system without proper scrutiny.***

1. The RMCC and its members have argued for many years that the best interests of the child need to be a major consideration in all decisions that fundamentally affect children’s lives as set out under international law, and that comprehensive best interests assessments need to be carried out at different stages of the decision-making process to ensure that children’s welfare is protected. This needs to include children who have been separated from their families and are unaccompanied outside their country of origin as well as those who are here in the UK with their families. RMCC members have continually raised concerns with government officials and Ministers,[[8]](#footnote-8) through passage of the 2014 and 2016 Immigration Acts[[9]](#footnote-9) and through research. For example in 2013, UNHCR’s research, which looked at the best interests of children within cases involving families seeking asylum, highlighted there was no formal and systematic collection or recording of information that will be necessary and relevant to a quality best interests consideration within Home Office procedures. This included a lack of any mechanism to obtain the views of the child and give those views weight in line with age and maturity.[[10]](#footnote-10)
2. In its evidence to the Joint Committee on Human Rights as part of their inquiry into the human rights of unaccompanied children, UNHCR said that “*the current practice of the UK is only to consider the best interests through an ‘immigration’ prism, rather than as a process where the decision maker is required to weigh and balance all the relevant factors of a child’s case*.”[[11]](#footnote-11) In effect, immigration rules and policies provide a very restricted space in which the best interests of the child are considered, limiting the possible outcomes for the decisions in a way that prioritise immigration control over children’ welfare.
3. This was highlighted in the case of RA and BF -v- SSHD in 2015 where the Home Secretary was ordered by the courts to bring back a UK-born child and his mother, who had been removed to Nigeria, because the Secretary of State had failed to have regard to RA’s best interests as a primary consideration. In particular, the Secretary of State did not take into account the implications of the mother’s mental health and the risk of that degenerating in the Nigerian context, and the likely consequences on removal, on the child who had been in a foster placement previously because of the mother’s poor mental health.[[12]](#footnote-12)
4. These issues have also been considered in other judicial proceedings. For example, established law on children’s best interests, which would be considered as part of an Article 8 consideration, makes clear that decision makers must first understand the best interests of the child and their weight, before going on to consider any other countervailing public interests factors.[[13]](#footnote-13)
5. While we have seen some progress in terms of the language used in Home Office guidance, this does not always equate to good practice and Home Office processes still lack a fundamental, comprehensive best interests determination process. For example, more recent research in 2017 by Coram Children’s Legal Centre looked at decision-making in family cases, and in their sample, 40% of decisions had not engaged with the child’s best interests, and 20% devoted just a couple of sentences to the child’s best interests.[[14]](#footnote-14)
6. Research by RMCC members has also highlighted that where children are separated from their parents and have no-one with legal parental responsibility looking out for them, their best interests particularly their long-term interests and life chances, are not systematically and comprehensively assessed within immigration decision-making or with respect to their care needs. [[15]](#footnote-15) For example research by the Law Centres Network reviewed decision making within 60 children’s asylum cases in 2014, and found that out of the 26 cases where children’s protection claims had been refused, only 14 refusal decisions explicitly referred to the s55 guidance, largely by way of a generic paragraph (in identical terms) cited at the beginning or at the end of the refusal letter. The recognition and/or importance of finding a durable solution is mentioned in only one of the 26 decisions (when refusing a 16 year old child ‘UASC’ leave).[[16]](#footnote-16) While the UK government consistently reaffirms its commitment to considering children’s best interest in all decisions made about them, experience from RMCC members, research and court judgements show that throughout the children’s asylum and care process, this is not reflected in practice. In effect, the asylum process merely pays lip service to children’s best interests.
7. In its latest observations on the UK in 2016, the UN Committee on the Rights of the Child expressed regret ‘*that the rights of the child to have his or her best interests taken as a primary consideration is still not reflected in all legislative and policy matters*’. It called on the government to ‘*ensure that this right is appropriately integrated and…applied in all legislative, administrative and judicial proceedings and decisions as well as in all policies, programmes and projects that are relevant to and have an impact on children*’.[[17]](#footnote-17)
8. To ensure there are sufficient safeguards in place, the RMCC wants to see the introduction of a comprehensive system of Best Interests Determination for all children, including European citizens, to make sure that immigration decisions, particularly where children are at risk of removal from the UK or separation from their parents by a removal decision, always expressly and fully consider children’s best interests first. We fully accept that this will not be the only consideration, but the best interests should be a primary consideration.
9. Specifically considering removals, given the lack of an existing systematic best interests assessment process, RMCC members are concerned that there is currently nothing in the Bill which would guarantee or give assurances that children who are EU nationals, or the family members of EU nationals, would not face forced removal from the country if they, or their family members, do not to engage with the EU settlement scheme, or are found not to meet the suitability criteria. It is necessary that well recorded best interest assessments, with a clear process are undertaken before any removal of a young person or their family members from the UK takes place.

***Recommendation 3: The government should put in place a best interests assessment process to make sure that before any child is removed from the UK or separated from their parents indefinitely as part of a removal decision, that a comprehensive best interests assessments is undertaken and recorded.***

**The risk of becoming undocumented**

1. There are between 3-4 million EU nationals currently in the UK who came here to live, work and study freely, understanding that they were welcome and free to do so. Children are a significant cohort within this population with unique rights and a great deal to lose if we get this wrong. According to analysis by the Migration Observatory, there were more than 900,000 children of non-Irish EU citizen parents living in the UK in 2017, over half of whom were born here (524,000 children). This includes 285,000 UK-born children whose parents report them to be EU citizens and 239,000 UK-born children whose parents report their children to be UK citizens. However, as the Migration Observatory analysis highlights, the available data from the Home Office suggests that tens of thousands of the latter cohort of children may not be British as their parents report and that in fact many parents may wrongly believe their children will be British, for example by virtue of being born in the UK[[18]](#footnote-18). This highlights one of a number of challenges that we will face in securing settled status or citizenship for all European children who will need it when this Bill is implemented.
2. Attempts to change or regulate the migration status of large populations comes with a high risk of those who are left out. In the United States, an estimated 34% of unauthorised migrants eligible for the Deferred Action for Childhood Arrivals regularisation programme had not applied 3.5 years after the programme began[[19]](#footnote-19). While the government has made significant improvements to the EU Settlement Scheme and taken away some of the barriers to registration, such as the fee which we welcome, it is extremely unlikely that the scheme will be 100% successful in securing the status of all children and young people.
3. If we assume that all of the 239,000 children of non-Irish EU parents are in fact British as their parents report and will therefore not need to secure their status through the EU Settlement Scheme, we are still left with an estimated 727,000 children whose parents reported them as EU citizens and who will need to secure their status to avoid becoming undocumented. If only 15% of these children do not apply, we could still be left with an additional 100,000 undocumented EU children in the UK following Brexit, which will effectively double the undocumented migrant child population[[20]](#footnote-20).
4. In its recent Windrush inquiry, the Home Affairs Select Committee warned that the UK’s existing undocumented child population was a problem that the government must solve: “*A failure to do so will leave many in a precarious position, unable to study, work or seek the support of social security as they transition into adulthood. There is no benefit to society in people being in this position, many of whom are likely to be British citizens or else entitled to be in the UK. A failure to act will also only serve to increase costs in the future. The Government needs to reduce the barriers to them regularising their status. The fees for children to establish their status are simply too high and the routes for doing so too long and too complex. The Home Office should reduce fees for children to cost-level, introduce waivers for those who are particularly vulnerable and reduce the number of regular applications that are required. The case for reintroducing legal aid for children is most pressing[[21]](#footnote-21).*
5. We agree with the Committee: to protect children and families from becoming undocumented as this Bill is implemented, we need to ensure there are adequate safeguards in place to reduce barriers to securing settlement or citizenship. These should include establishing a right of appeal, providing legal aid to families, and reducing or waiving citizenship fees to enable parents and local authorities to act in children’s best interests – we discuss these further below.
6. In addition, we also need to address the policies under successive governments which make being undocumented so dangerous for children. These include policies that forcibly remove children from the UK or separate them from their parents indefinitely, even when this would be detrimental to their welfare; and policies which prevent children and families from accessing vital services and support to promote their welfare and life chances, based of their immigration status or that of their parents. We have already described the need for a best interests assessment process above and we will go on to describe the safeguards that could be put in place to safeguard children from growing up in poverty and destitution as a result of the immigration policy.

***Recommendation 4: We urge the government to closely monitor the settlement scheme and publish data on how many children and young people have secured status through the scheme including whether children are getting settled status, pre-settled status or citizenship. In addition, the government should publish data or commission research if existing data is not available on how many undocumented migrant children are currently living in the UK.***

**Vulnerable children and young people**

1. The risks of failing to settle their status or secure citizenship will be particularly high for certain cohorts of children and families, such as those with complex immigration histories, victims of trafficking and modern slavery, children and families experiencing domestic violence or homelessness, children within Roma and other marginalised communities, and children in care and care leavers. There will be a range of reasons why families will not apply or will struggle to apply: from a simple lack of awareness, lack of trust in authorities, lack of political engagement to know that they need to apply and incorrect information about who needs to apply, all the way to significant problems from a lack of documentation, lack of English or literacy, complex immigration histories and so on. While the government has waived the EUSS fee and established a £9m fund to support vulnerable cohorts over the next 12 months including the groups mentioned above which we very much welcome, we nevertheless believe that additional safeguards are needed to protect all children and young people, particularly in the long run when there is less support available and the issue becomes less salient in people’s minds, much like with the Windrush cases.
2. Children and young people who have become separated from their families or legal guardians – whether they are living in private fostering arrangements or are in the care of a local authority – will be particularly at risk. This includes children who are being ‘looked after’ by local authorities due to abuse or neglect, children who may have been trafficked to the UK for the purposes of exploitation but have come into care, young people who have been abandoned, orphaned or estranged from their families, children within the secure estate, and so on. Importantly we would also consider care leavers within this cohort: these will be vulnerable young people who are likely to face significant challenges to settling their status as well as other challenges common for this group such as homelessness and not being in employment or education. Unlike separated children who will be able to access legal aid for all non-asylum immigration cases once the policy has been implemented and will have a strong presumption to receive Exceptional Case Funding in the meantime, currently care leavers cannot access legal aid in this way. An inability to provide the accepted documentation or identification, lack of access to good quality free advice and support, or mental health issues and multiple disadvantages make the process of settlement under the EU Settlement Scheme or securing citizenship a substantial challenge.
3. Little is known about the numbers of European children who are currently being looked after by local authorities across the UK, despite repeated concerns raised by RMCC members over the past two years. Although five local authorities were included in the second private beta testing phase at the end of 2018, there is very little detail about how effective this was for the children involved for example how many children in total applied to the scheme, how many were granted EU settled status or pre-settled status, how many lacked documents to make applications in the first place[[22]](#footnote-22). We urge the committee to examine these issues in detail.

***Recommendation 5: We urge the committee to consider in detail the safeguards in place for looked after children and care leavers, including whether local authorities are aware of their responsibilities and are putting in place measures to effectively support all children in their care and care leavers to settle their status or citizenship rights where they are eligible before they become subject to immigration control.***

1. In addition to looked after children, RMCC members’ frontline experience highlights that many children and family’s cases are inherently complex and that children and families will need good quality legal advice and information to make sure that children are not only able to settle their status but that they are able to establish or register their British citizenship where they are eligible and if this is in their best interests.[[23]](#footnote-23) The lack of legal aid for these cases is a significant barrier as are the high fees for citizenship applications.
2. A way that the Home Office could take a proactive step to ensure this bill does not result in the loss of the rights of children would be to ensure that all young people and families have access to legal aid for advice on their options and support with their applications, if they need it. This safeguard would be particularly important in supporting low income families, victims of domestic abuse, single parents, families dealing with mental health issues and disability, homeless families, care leavers and victims of modern slavery, all of whom may require specialist immigration advice which is not covered under OISC level 1.

***Recommendation 6: Reinstate legal aid to make sure that any young adult or family needing specialist legal advice or representation with securing EU settled status or citizenship is able to get and that this is not only available to those who can afford it. This will ensure that all vulnerable families and young people with complex cases have access to good quality free legal advice and representation, and equal access to justice.***

**Derived rights**

1. The RMCC is concerned about what will happen to children and carers with rights derived from EU law who currently face on-going uncertainty. The Statement of Intent outlines that ‘Chen’ carers and ‘Ibrahim and Teixeira’ children or carers ‘*may be EU citizens eligible to apply for status under the EU settlement scheme. Otherwise, provision will be made in the Immigration Rules for them to apply for leave to remain, consistent with the Withdrawal Agreement. Their current rights do not lead to a right of permanent residence under EU law, but further details will be provided in due course on the new status available to them*’.[[24]](#footnote-24) There is no provision for this group under the statement of changes HC9675, and many will not be EU nationals or have an alternative route to settlement in the UK. If required to rely on their family and private life rights, they will need to demonstrate that they meet the Immigration Rules (as a parent of a child who either is British, or has lived in the UK for seven years and where it would not be reasonable for them to leave the UK). Their EU national children are being forced into uncertainty by the lack of clarification. The SoI also states that Zambrano carers will be provided for in the Immigration Rules, although it is noted that ‘*their current rights do not lead to a right of permanent residence under EU law, but further details will be provided in due course on the new status available to them*’.[[25]](#footnote-25) However, this remains unresolved. As highlighted in the previous section, given the complexity of immigration rules and the potential additional disadvantages faced by these families – e.g. single parents – and the complexities of their circumstances – e.g. mixed immigration and nationality families – legal aid is essential in making sure that families get good quality advice and support needed to make the right decisions and applications for themselves and their children.

***Recommendation 7: We urge the government to provide clarity on the rights and protections of those resident in the UK with derivative rights i.e. Chen, Zambrano, and Ibrahim and Teixeira.***

**A right of appeal**

1. Decisions made by the Home Office under the EU Settlement Scheme do not currently attract a tribunal appeal right.[[26]](#footnote-26) As the Home Office indicated in its Statement of Intent on the Settlement Scheme published in June 2018, primary legislation is required to make provision for such a right.[[27]](#footnote-27) At present, only a system of administrative review against some decisions made under this Scheme has been added to the Immigration Rules.[[28]](#footnote-28)
2. The availability of an appeal right for the Scheme was agreed to in the Withdrawal Agreement between the EU and the UK currently awaiting approval by the UK Parliament[[29]](#footnote-29) and the government has confirmed that “*the UK will continue to run the EU Settlement Scheme for those resident in the UK by 29 March 2019 in a ‘no deal’ scenario. The basis for qualifying for status under the scheme will remain the same as proposed in a ‘deal’ scenario and will be focused on residence in the UK. This means that any EU citizen living in the UK by 29 March 2019 will be eligible to apply to this scheme, securing their status in UK law*.”[[30]](#footnote-30) However, in the event of a ‘no deal’ Brexit, ‘*EU citizens would have the right to challenge a refusal of UK immigration status under the EU Settlement Scheme by way of administrative review and judicial review*’ only.[[31]](#footnote-31) There is no clear rationale for weakening the procedural protections for EU nationals in the event of a no deal Brexit.
3. With no right of appeal, the only options would be an internal administrative review[[32]](#footnote-32) or full-blown judicial review[[33]](#footnote-33) as remedies to challenge a refusal of settlement under the scheme. It is more expensive for both the State and claimant to undertake a judicial review rather than an appeal their decision. This may result in situations where applicants entitled to status are unable to challenge an unlawful decision due to the prohibitive cost. The use of Internal Administrative Review in other parts of the immigration system has also been shown to be flawed – in his inspection of Administrative Review process, the Independent Chief Inspector of Borders and Immigration found that ‘the Home Office was not yet able to demonstrate that it had delivered an efficient, effective and cost-saving replacement for the previous appeals mechanisms’. [[34]](#footnote-34) The available evidence also suggests the growing use of administrative review has resulted in a system where individuals are less likely to succeed in overturning their negative immigration decision. Before access to the tribunal was severely restricted by provisions in the Immigration Act 2014, around 49% of appeals were successful. Whereas, over the same period in 2015/16, the success rate for administrative reviews conducted in the UK was 8%, falling to just 3.4% in the following year.[[35]](#footnote-35)
4. By comparison, a right of appeal provides a route to an independent assessment of the evidence, and under the Tribunal Procedure Rules allows individuals justice to summons individuals, or require disclosure of evidence. Appeal rights are a critical safeguard.

***Recommendation 8: We urge the government to confirm that EU nationals who wish to appeal the decision made on their immigration status through the EU settlement scheme will have that right of tribunal appeal in the event of the UK leaving the EU without a deal. This would provide a vital safeguard to children, young people and families.***

**Citizenship fees**

1. As highlighted earlier, while many children will be able to apply through the EU settlement scheme, the RMCC believes that a significant proportion will potentially also have rights to British citizenship, either automatic rights based on being born in the UK to parents who have gained settled status prior to their birth or rights to register as British citizens and that in many cases it will be in their best interests to secure the greater level of protection provided by citizenship. While in some cases dual nationality isn’t an option, for many children it will be and will allow them to have greater security. Migration Observatory analysis shows that of the 285,000 UK-born children of non-Irish EU parents in the UK in 2017, 169,000 children were born after the parents had been in the UK for 5 years or more. This suggests that a significant number of children *could*have an automatic right to citizenship[[36]](#footnote-36) and may only need to apply for a passport, though few are likely to be aware of these options or how to secure this for their children. Others will have rights by entitlement or discretion to register as British citizens and while in many cases, it will be in *their* best interests to get the greater protection of citizenship, the current citizenship fee of £1,012 per child will make this prohibitive for many families.
2. Since 2012, children’s citizenship registrations fees have increased by almost 84% from £551 in April 20129 to £1,012 in April 201810, without any published assessment undertaken each year as the fees have increased to understand the impact on children’s rights. The government has stated that ‘*becoming a citizen is not necessary to enable individuals to live, study and work in the UK, and to be eligible for benefit of services appropriate to being a child or a young adult. The decision to become a citizen is a personal choice, and it is right that those who make that decision should pay a fee*.’[[37]](#footnote-37) However this is not a matter of choice for children who have rights to register as a British citizen. Moreover, at its core this issue is about doing what is in the child’s best interest, which is what the government is committed to, and about fairness. This fee makes securing citizenship rights for children entirely unaffordable for some families particularly where they are on lower income, which is likely to affect particularly single parent households, those with a disability or families with more than one child. Meanwhile parents who are better off will be able to secure these rights for their children as a matter of course.
3. The huge increases to immigration fees more generally in recent years mean that most routes to regularisation are simply not a viable option for many young people and families. Between 2012 and 2017, the application fee for a dependent child’s indefinite leave to remain application increased by 363%, while the average weekly wage rose by only 9%[[38]](#footnote-38). There is also a fear among civil society organisations supporting migrant children and families that the knock-on effect of eliminating the EUSS fee will be increases to citizenship and other immigration application fees in April, as the Home Office attempts to replace lost income.
4. There is no fee waiver for settlement (ILR) or citizenship. There is a fee exemption for children in care to apply for settlement, but not for citizenship. For children in care and care leavers, it is a cost-shift: using limited local authority resources to pay a Home Office application fee to register a child as a British citizen. However, without the local authority paying the fee no citizenship application can be made, as there is no fee exemption for citizenship cases. The present cost-shift means that local authorities are de-incentivised to apply for citizenship for children in their care even though in many cases it will be in their best interests as any parent would and will ensure a durable solution to their outcomes, particularly in providing them with security and stability in the long run. This is problematic because citizenship can be available to children in care where other immigration routes are closed to them. The stakes in such cases are very high, and bad practice is well-documented: in 2016 Local Government Ombudsman case found that one London Council failed to act appropriately and in a timely manner to help a former relevant child regularise her immigration status after she became looked after, and was made to pay out £5,000 in damages.[[39]](#footnote-39)
5. Under section 55 of the Borders, Citizenship and Immigration Act 2009, the Secretary of State has a duty to safeguard and promote the welfare of children in respect to all his functions including nationality. We would not be adhering to our own principled laws to act in a child’s best interests if we do not take this opportunity now to reduce or eliminate these fee.

***Recommendation 9: Remove or reduce to administrative cost the citizenship fee for all children and young people.***

**Recourse to public funds and access to services**

1. Given the likely possibility of thousands of children and young people, their families and those on whom they are dependant becoming undocumented where they are not able to secure their status through the EU Settlement Scheme, there is a very real risk that many more children, young people and families will lose access to the safety net of mainstream benefits and other services which over the years have increasingly become dependent on immigration status. This is already the case for many children and families who have ‘no recourse to public funds’ either because their status is uncertain or they are undocumented, or because they have an ‘NRPF’ condition applied to their leave to remain. Some EEA national families already lack access to public funds where they have not been exercising treaty rights and there is a question about how those with pre-settled status will be treated for the purposes of being able to access recourse to public funds.
2. RMCC members have documented the damage that these policies have had on children and young people over the years laying bare the harsh realities for families who cannot access the safety net for children in poverty[[40]](#footnote-40). For example a report published by Project 17 this week - ‘Not Seen, Not Heard: Children’s Experiences of the Hostile Environment’ -shows that the challenges facing families who have no recourse to public funds, and the interconnected barriers to accessing local authority support in the absence of access to mainstream benefits, has a significant emotional impact on children and young people. Children experiencing these issues are left feeling socially isolated, distressed, ashamed, and unsafe. This is because NRPF conditions exclude families and children from accessing benefits which are vital to the well-being of a child and are specifically intended to support families on low income to close the gaps of disadvantage facing families for example through the provision of Free School Meals, the Pupil Premium, access to social housing and childcare offers for disadvantaged two year olds so that their parents can get back into work.
3. Without access to mainstream support families facing destitution can only rely on support under Section 17 Children Act 1989 which is provided to children who are found to be in need in a local area. However, as the report shows, support under section 17 is increasingly hard to access and local authorities are employing various strategies to refuse families with no recourse to public funds (NRPF) support such as misinformation, attacks on credibility, intimidation and aggression, leaving families destitute and at high risk of exploitation. Of the children in this study, 24% were left street homeless by a local authority.
4. A child who was interviewed for this research Joel, age 9, reported having to sleep in an Accident and Emergency department: ‘*We had to keep going to McDonalds every night and we would also go to A&E. I would have to wear my school clothes and sleep like that.... They would say we have to sleep where the people wait but it’s just like lights and there is nothing colourful there. The chairs were hard. You know when you just sleep in the waiting room? I felt sorry for my mum because she had to stay up and my head had to be on her lap. She had to stay awake, her eyes were open like 24/7, all night and all day so she could watch over me. It was hard for her but also hard for me*.’[[41]](#footnote-41)
5. A recent LSE study on child poverty shows that children in both non-EEA and EEA recent migrant families have a higher risk of poverty compared to children in UK born and long-term migrant families for a range of poverty measures. In addition, children in non-EEA recent migrant families are at a higher risk of low income and material deprivation and severe low income and material deprivation than EEA and UK born families. So the depth of poverty appears to be greater. Analysis into these differences highlights employment income and housing costs as major explanatory factors. Migrant families may not be able to access social housing and will have to rely on private rented accommodation more than British born families. Furthermore, researchers point to differences in entitlement and access to income-related benefits based on parental nationality.[[42]](#footnote-42)
6. The White Paper indicates that there will be no departure from the current policies of applying the ‘no recourse to public funds’ condition to the various migration routes including to grants of temporary leave through the ten-year route to settlement, which many children and young people who have human rights applications for leave to remain are currently on.
7. Without a change in policy or alternative safeguards put in place, the RMCC is concerned that many more children and families who become subject to immigration control through this Bill and do not settle their status in time, as well as future children in migrant families, will face similar risks to increased deprivation as a result of having ‘no recourse to public funds’ conditions and being unable to access the safety net provided for children more generally.
8. Given that there are already measures in place to ensure that mainstream benefits are only provided to those who need it, the NRPF condition serves primarily to prevent access to vital support for children based on their parents’ immigration status. Therefore, preventing children and families from accessing key mainstream benefits and income support regardless of their needs, not only puts the wellbeing of children at risk but again shifts costs to local authorities with already limited resources. The RMCC firmly believes that the only way the government can ensure the wellbeing of children living resident in the UK is to make families with children exempt from NRPF conditions.

***Recommendation 10: Children should be able to access benefits and vital support when they need it, and not be restricted from this safety net because of their parent’s immigration status. At the very least the government should ensure that no EEA children and their family members are left without ‘recourse to public funds’ if they do not settle their status or only receive pre-settled status following Brexit. We also urge the government not to apply the ‘NRPF’ condition to families with dependent children when granting leave to remain given the damage this can cause to children’s welfare and safety.***

**Family reunion rights for children**

1. The RMCC supports calls made by the Families Together coalition for better protection of refugee children in the UK. Refugees in the UK have the right to be joined by their closest relatives via family reunion, with the exception of separated children under the age of 18 years old. Unaccompanied refugee children who have been recognised as needing international protection by the UK government are not allowed to be reunited in the UK even with their parents or siblings, meaning they must live without their family in perpetuity. This means that even where children have been orphaned and are seeking to be reunited with their younger siblings who may themselves be unaccompanied abroad, they are unable to apply under the immigration rules to be reunited in the UK.
2. Although the government claims that providing children with a right to sponsor family members would force more children to make dangerous journeys on their own, the result of this policy is that some children, who are already in the UK and to whom the Secretary of State owes a duty to promote their welfare and best interests, are being left extremely vulnerable due to the continued separation from their loved ones and distressed by the fact that their family members are still facing danger. Although there is no publicly available data currently, we know anecdotally that some RMCC members have been able to successfully support refugee children to apply to sponsor family members outside the immigration rules. Although no data is available, we understand that these cases are generally refused by the Home Office at the application stage but are often successful when they are appealed in the courts, where the best interests and welfare of the child are properly considered. As they are outside of the immigration rules, there are no clear procedures to follow and the process currently takes a long time, placing significant strain on children’s welfare.
3. When debating these issues, we urge the committee to seek further information and evidence about how children’s welfare is impacted by these restrictions as well as considering the cases of children applying outside the immigration rules that have been successful.

***Recommendation 11: We recommend that separated refugee children are granted the same rights in law as adult refugees to sponsor their parents and siblings to join them.***

1. A full list of members can be found here: <http://refugeechildrensconsortium.org.uk/about-the-rmcc/> [↑](#footnote-ref-1)
2. Coram Children’s Legal Centre (2013) ‘Growing up in a hostile environment’: <https://www.childrenslegalcentre.com/wp-content/uploads/2013/11/Hostile_Environment_Full_Report_Final.pdf>; Coram Children’s Legal Centre (2017) ‘This is my home: Securing permanent status for long-resident children and young people in the UK’: <https://www.childrenslegalcentre.com/this-is-my-home/>; Skehan A, Sandhu B, Payne L, Wake Smith E. (2017) ‘Precarious Citizenship: Unseen, Settled and Alone – The Legal Needs of ‘Undocumented’ Children and Young People in the England and Wales’. London: MiCLU: <https://miclu.org/assets/uploads/2017/12/Precarious-citizenship-report.pdf>; Project 17 (2019) ‘Not Seen, Not Heard: Children’s Experiences of the Hostile Environment’: <https://www.project17.org.uk/policy/campaigns/seen-and-heard/>; Doctors of the World (2017) ‘Deterrence, delay and distress: the impact of charging in NHS hospitals on migrants in vulnerable circumstances’: <https://www.doctorsoftheworld.org.uk/wp-content/uploads/import-from-old-site/files/Research_brief_KCL_upfront_charging_research_2310.pdf> ; Capron, L., Dexter, Z. & Gregg, L. (2016) ‘Making Life Impossible: How the needs of destitute migrant children are going unmet’. The Children’s Society, London: <https://www.childrenssociety.org.uk/what-we-do/resources-and-publications/making-life-impossible-how-the-needs-of-destitute-migrant> [↑](#footnote-ref-2)
3. See Simon Hoffman, 2015, Evaluation of the Welsh Government’s Children’s Rights Impact Assessment, Welsh Government at <https://cronfa.swan.ac.uk/Record/cronfa30963v> [↑](#footnote-ref-3)
4. ##  This commitment was originally made through a written statement to the House on 6 December 2010, by Sarah Teather, then Minister of State, Department of Education

 <https://www.theyworkforyou.com/wms/?id=2010-12-06a.5WS.1> [↑](#footnote-ref-4)
5. <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2018-11-20/HLWS1064/> [↑](#footnote-ref-5)
6. Figure provided by the Department for Education at UNCRC Action Group Meeting on 16th January 2019 [↑](#footnote-ref-6)
7. <https://hansard.parliament.uk/lords/2018-10-23/debates/B354EE36-28BB-45ED-A6EA-9846CC39594D/ChildCitizenshipFees> [↑](#footnote-ref-7)
8. For example, a workshop on best interests took place at Coram in January 2015 and was attended by a number of RMCC members and Home Office representatives; RMCC gave evidence to the Independent Chief Inspector of Borders and Immigration on best interests in October 2017: <http://refugeechildrensconsortium.org.uk/icibi-childrens-best-interests/> [↑](#footnote-ref-8)
9. House of Lords, Second Reading Immigration Bill – December 2015: <https://www.childrenssociety.org.uk/sites/default/files/RCC%20-%20Immigration%20Bill%20Second%20Reading%20House%20of%20Lords.pdf> [↑](#footnote-ref-9)
10. UNHCR (2013) Considering the Best Interests of a Child Within a Family Seeking Asylum’: <http://www.unhcr.org.uk/fileadmin/user_upload/docs/UNHCR-Best_Interest-screen.pd> [↑](#footnote-ref-10)
11. Joint Committee on Human Rights, Human Rights of Unaccompanied Children and Young People in the UK, First report (2013-2014, HL9, HC196), pg 12, para 24: <https://publications.parliament.uk/pa/jt201314/jtselect/jtrights/9/9.pdf> [↑](#footnote-ref-11)
12. RA (A child) and BF -v- SSHD 2015: <https://immigrationandvisasolicitors.co.uk/wp-content/uploads/2017/05/RA-and-BF-v-SSHD.pdf> [↑](#footnote-ref-12)
13. Relevant cases include *KO (Nigeria) and Others v Secretary of State for the Home Department* [2018] UKSC 53; *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74; H v Lord Advocate 2012 SC (UKSC) 308 and *H(H) v Deputy Prosecutor of the Italian Republic* [2013] 1 AC 338; ZH (Tanzania) v SSHD [2011] UHSC 4; *EM (Lebanon) v SSHD* [2008] UKHL 64 [↑](#footnote-ref-13)
14. Coram Children’s Legal Centre (2017) ‘This is My Home’ p16 at <http://www.childrenslegalcentre.com/this-is-my-home/> [↑](#footnote-ref-14)
15. The Children’s Society (2015) ‘Not Just a Temporary Fix: Durable solutions for separated migrant children’ [↑](#footnote-ref-15)
16. Page 139 of Law Centres Network (2015), Put Yourself in Our Shoes: Considering Children’s Best Interests in the Asylum System: <http://www.lawcentres.org.uk/policy/news/news/keep-children-s-best-interests-at-heart-of-asylum-system-new-report> [↑](#footnote-ref-16)
17. <http://www.crae.org.uk/publications-resources/un-crc-committees-concluding-observations-2016/> [↑](#footnote-ref-17)
18. Sumption, M., & Kone, Z. (2018). Unsettled Status? Which EU Citizens are at Risk of Failing to Secure their Rights after Brex it?. Migration Observatory, COMPAS University of Oxford. [www.migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-which-eu-citizens-are-atriskof-failing-to-secure-their-rights-after-brexit](http://www.migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-which-eu-citizens-are-atriskof-failing-to-secure-their-rights-after-brexit) [↑](#footnote-ref-18)
19. Hipsman, F., Gomez Aguinaga, B. & Capps, R. (2016) DACA at Four: Participation in the Deferred Action Programme and Impacts on Recipients. Washington DC: Migration Policy Institute referenced in Sumption, M., & Kone, Z. (2018). Unsettled Status? Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit?. Migration Observatory, COMPAS University of Oxford. [↑](#footnote-ref-19)
20. Although there is no official government data available, academic research from 2012 suggested there were an estimated 120,000 undocumented migrant children living in the UK: <https://www.compas.ox.ac.uk/2012/pr-2012-undocumented_migrant_children/> [↑](#footnote-ref-20)
21. 12 Para 128: https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/990/990.pdf [↑](#footnote-ref-21)
22. <https://www.gov.uk/government/publications/eu-settlement-scheme-private-beta-2/eu-settlement-scheme-private-beta-testing-phase-2-report> [↑](#footnote-ref-22)
23. Coram Children’s Legal Centre, ‘EU Settlement scheme: concerns and recommendations’, August 2018 at https://www.childrenslegalcentre.com/wp-content/uploads/2018/08/EU-Settlement-Scheme\_concerns\_August2018FINAL.pdf [↑](#footnote-ref-23)
24. Home Office, EU Settlement Scheme: Statement of Intent, 21 June 2018, Section 6.11 [↑](#footnote-ref-24)
25. Home Office, EU Settlement Scheme: Statement of Intent, 21 June 2018, Section 6.11 [↑](#footnote-ref-25)
26. A Tribunal appeal is an oral or paper process in the First-tier Tribunal (Immigration and Asylum Chamber) where all aspects of the merits of the initial decision are considered by an independent tribunal judge. The judge can substitute a new decision for the Home Office decision [↑](#footnote-ref-26)
27. Home Office, Statement of Intent (above), para 5.19. [↑](#footnote-ref-27)
28. See Immigration Rules Appendix AR (EU): Administrative Review for the EU Settlement Scheme. [↑](#footnote-ref-28)
29. As required under section 13 of the European Union Withdrawal Act 2018. If a Withdrawal Agreement is secured, in the event of a refusal, it will be possible to ask for an administrative review of decision and ultimately there will be a right of appeal for those applying from 30 March 2019. See

Home Office, EU Settlement Scheme: Statement of Intent, 21 June 2018, Section 5.18 [↑](#footnote-ref-29)
30. #  DExEU, Policy paper on citizens' rights in the event of a no deal Brexit, 6 December 2018, para 11 at <https://www.gov.uk/government/publications/policy-paper-on-citizens-rights-in-the-event-of-a-no-deal-brexit>

 [↑](#footnote-ref-30)
31. DExEU, Policy Paper: Citizens’ Rights – EU Citizens in the UK and UK Nationals in the EU (6 December 2018), para. 11 [↑](#footnote-ref-31)
32. Administrative review is a mechanism whereby another official in the Home Office reviews the papers from the initial decision for casework errors. The decision can then be changed if there is an error [↑](#footnote-ref-32)
33. Judicial review. A process which, in immigration cases, usually takes place in the Upper Tribunal (Immigration and Asylum Chamber). A judge reviews a decision on the basis of narrow legality grounds (e.g. procedural fairness, human rights) rather than providing a consideration of the full merits. The judge can declare a decision unlawful and the decision then has to be retaken afresh by the Home Office. [↑](#footnote-ref-33)
34. <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/631622/A-re-inspection-of-the-Administrative-Review-process1.pdf> [↑](#footnote-ref-34)
35. <https://publiclawproject.org.uk/wp-content/uploads/2019/01/PLP-Briefing-on-Immigration-and-Social-Security-Co-ordination-Bill-2019.pdf> [↑](#footnote-ref-35)
36. A child will have an automatic right to British citizenship if they are born in the UK and have at least one British or settled parent: <https://www.gov.uk/british-citizenship>  [↑](#footnote-ref-36)
37. [https://hansard.parliament.uk/Lords/2018-06-12/debates/5DE6605F-5F9C-4D5E-909A-55CD245CC5F3/ImmigrationAndNationality(Fees)Regulations2018](https://hansard.parliament.uk/Lords/2018-06-12/debates/5DE6605F-5F9C-4D5E-909A-55CD245CC5F3/ImmigrationAndNationality%28Fees%29Regulations2018) [↑](#footnote-ref-37)
38. See the ONS Average weekly earnings time series dataset (EMP), 13 September 2017 when compared from April 2012 to April 2017. Available at <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/timeseries/kai7/emp> [↑](#footnote-ref-38)
39. See Local Government Ombudsman, Investigation into a complaint against Royal Borough of Greenwich, reference number: 13 019 1061 (January 2016) [↑](#footnote-ref-39)
40. Capron, L., Dexter, Z. & Gregg, L. (2016) ‘Making Life Impossible: How the needs of destitute migrant children are going unmet’. The Children’s Society, London: <https://www.childrenssociety.org.uk/sites/default/files/making-life-impossible.pdf> [↑](#footnote-ref-40)
41. Dickson, E. (2019) ‘Not Seen, Not Heard: Children’s Experiences of the Hostile Environment’. Project 17, London: <https://www.project17.org.uk/policy/campaigns/seen-and-heard/> [↑](#footnote-ref-41)
42. Vizard, P., Burchardt, T., Obolenskaya, P., Shutes, I. & Battaglini, M. (2018) ‘Child poverty and multidimensional disadvantage: Tackling “data exclusion” and extending the evidence base on “missing” and “invisible” children’. LSE, London:<http://sticerd.lse.ac.uk/dps/case/cr/casereport114.pdf>  [↑](#footnote-ref-42)