

All-Party Parliamentary Group on Migration

**REPORT OF THE INQUIRY
INTO NEW FAMILY
MIGRATION RULES**

June 2013

About the APPG on Migration

The All-Party Parliamentary Group on Migration (www.appgmigration.org.uk) was set up to support the emergence of mainstream, progressive policy debate on migration in the UK parliament. It aims to provide a discussion forum for parliamentarians and act as a source of well-evidenced and independent information on key migration issues.

The APPG on Migration is chaired by Jack Dromey MP and secretariat support is provided by the Migrants' Rights Network.

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Disclaimer

The facts presented and views expressed in this publication are those of the APPG inquiry Committee and the content has been agreed by Committee members. The content is not necessarily endorsed by other members of the APPG on Migration, the political parties of the members of the Committee or the Migrants' Rights Network.

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Foreword

The UK Government properly recognises family life to be the bedrock of a strong and stable society. Where families are formed across borders, wider concerns about immigration management and any costs to the public purse are also considerations.

Since July 2012, new family migration rules in the UK have brought into focus how these different considerations may compete. This inquiry arose out of cross-party concern that the introduction of a new minimum income requirement for those seeking to sponsor a non-EEA partner and any children, and of new rules affecting sponsorship of adult dependents, may have led to family members being unnecessarily and unfairly separated from one another.

During the course of this inquiry we received nearly 300 submissions, from affected families, charities, lawyers, businesses and MPs. Whilst this inquiry does not claim to be a comprehensive review of the emerging impacts of new family migration rules, we were impressed by both the amount of evidence we received and its weight. The evidence that we heard suggests that there is a strong case for these rules to be reviewed.

We found that, in today's internationally connected world, British citizens who are seeking to build a family with a non-EEA national – including from the USA and from Commonwealth countries such as Australia, Pakistan and India – are being prevented indefinitely from living together in their own country. We heard from a range of people who had been affected by the new rules, including British citizens and permanent residents with considerable means, or access to means.

In many of the cases children, including very young children, had been separated from a parent, with potentially severe effects on their future development.

We also heard that the new rules may have generated costs to the public purse, which we assume must not have been anticipated.

In addition, on the basis of evidence we received, the adult dependent relative route appears to have all but closed. British people and permanent residents who may wish to care for a non-EEA elderly parent or grandparent at their own expense in the UK now appear unable to do so. We question whether this is unnecessarily prohibitive and likely to have negative impacts into the future by prompting significant contributors to our society to move abroad or deterring them from working here at all.

We heard that the UK's new family migration rules are among the toughest of their kind in Europe, and that European Union nationals now benefit from less restrictive rules relating to their family life in the UK than those affecting British citizens.

However, we were encouraged by a recent assurance (in answer to a written parliamentary question) that “[t]he Government will keep the impact of the rules in achieving these objectives and more generally on family life in the UK, under review in the light of the published immigration statistics and other sources of information available on the operation of the rules”.

We urge Government to consider the emerging evidence about what must be the unintended consequences of these rules, and hope they will agree the need fully to review whether, one year on from their introduction, these rules have struck the right balance between different interests.

Baroness Sally Hamwee
Chair of the APPG on Migration inquiry Committee

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Executive summary

Background

The family migration inquiry was launched by the APPG on Migration on 20 November 2012 to explore the impacts of new rules that came into force on 9 July 2012. In particular, the inquiry looked at the new minimum income requirement of £18,600 for British nationals and permanent residents ('UK sponsors') seeking to sponsor a non-EEA spouse or partner, rising to £22,400 to sponsor a child in addition and a further £2,400 for each further child included in the application; and the new rules on sponsorship of non-EEA adult dependents applying to come to the UK.

Over 280 submissions were received by the APPG on Migration inquiry Committee, including over 175 submissions from families who had been affected by the rules. Written evidence was also received from charities, lawyers, local authorities, businesses and MPs from across the UK.

Key findings

1. Some British citizens and permanent residents in the UK, including people in full-time employment, have been separated from a non-EEA partner and in some cases their children as a result of the income requirement

Evidence received by the Committee, including individual submissions from over 100 families in this category, suggests that the new income requirement has affected a range of British citizens and permanent residents in the UK who have sought to sponsor the entry of a non-EEA partner and any children since July 2012. The Committee heard from a number of UK sponsors in full-time employment at or above the National Minimum Wage (currently £6.19 per hour, or £12,855 per annum) who reported that they were unable to meet the income requirement. This reflected wider evidence suggesting that 47% of the UK working population in 2012 would fail to meet the income level in order to sponsor a non-EEA partner.

Other submissions suggested that, because of variations in earnings between regions, the income requirement has had a particular impact on UK sponsors based outside London and the South East. Lower-earning sections of the UK working population including women, young adults, elderly people, and some ethnic minority groups also reported difficulties. The inquiry heard that the income requirement may have generated some unforeseen costs to the public purse, including an increased uptake of welfare benefits among some UK sponsors, greater pressure on UK sponsors and the state with regard to caring responsibilities, and a loss of potential tax revenue from future non-EEA partner earnings in the UK.

2. Some British citizens and permanent residents have been prevented from returning to the UK with their non-EEA partner and any children as a result of the income requirement

The Committee heard from over 60 further families within which a UK sponsor, non-EEA partner and in some cases their children were seeking to return to the UK as a family unit, but had been delayed or prevented from doing so because of the level of the income requirement and the limited sources permitted in order to meet the requirement. In some cases, the non-EEA partner was the main earner with a medium or high salary that could not be counted towards the income requirement.

3. Some children, including British children, have been indefinitely separated from a non-EEA parent as a result of the income requirement

45 of the families who submitted evidence reported that their inability to meet the income requirement had led to the separation of children, including British children, from a non-EEA parent or wider family members. Some submissions referred to children, including babies, who had been separated indefinitely from a non-EEA parent who could not enter the UK, with potentially significant implications for their development and wellbeing. In other cases, children were living overseas with both parents as the non-EEA parent could not enter the UK, and were separated from grandparents and wider family networks as a result.

The Committee did not seek specific evidence on how far the best interests of children had been considered by decision-makers in EEA partner applications since July 2012. However, it did note that UK Border Agency Chief Inspector John Vine in January 2013 found no evidence that the best interests of children had been referred to specifically in a sample of non-EEA partner entry clearance refusals which involved children in the UK.

4. The current permitted sources in order to meet the income requirement may not fully reflect the resources available to some families

In many of the cases submitted as evidence to the Committee, the family had failed to meet the income requirement despite apparently having adequate resources to support themselves in the UK. This was often as a result of the limited range of permitted sources in order to meet the income requirement:

- The exclusion of the non-EEA partner's prior and / or prospective earnings in entry clearance applications had delayed or prevented some high income / high net worth individuals from entering the UK;
- The Committee heard about the impact of the limited permitted application of capital. Savings, to count, must have been held for a period in cash, in an amount which for many seeking to 'top-up' a shortfall in their earnings with cash was unattainable;
- Some families reported applications which had failed because of restrictions on relying on income from self-employment: particularly relating to the limited periods from which such income could be counted; and to the restriction on combining self-employment income and savings;
- The Committee also heard about cases in which UK-based family members would be willing and able to financially support or accommodate the non-EEA partner. However, third party support cannot be counted towards meeting the income requirement.

These rules appear to have had some perverse outcomes, delaying or preventing some families from living together in the UK where their income and / or net worth suggests that they would have been far from the need to rely on the state.

5. The adult dependent relative visa category appears in effect to have been closed

According to the evidence received by the Committee, the entry route for adult dependent relatives appears in effect to have been closed. The inquiry received written evidence from 15 British citizens and permanent residents, some of whom were medium and high earners in medicine and law, who had been unable to bring an elderly relative to join them in the UK as a result of the new rules. The Committee heard about a 'catch 22' situation, within which UK sponsors who have the means to support an elderly relative in the UK are considered able to do

so overseas and therefore appear to fail to meet the rules. It also heard that elderly relatives are required to be all but “*vegetating*” before they can be sponsored to come to the UK.

Evidence from the British Medical Association suggested that the National Health Service has lost some skilled foreign doctors since July 2012 because they have had to return overseas in order to care for elderly relatives, and warned of a longer-term deterrent effect on international talent as a result.

Recommendations

Minimum income requirement

1. Government should commission an independent review of the minimum income requirement, drawing on evidence of its impacts since July 2012. The review should aim to establish whether the current level of the income requirement and permitted sources in order to meet it represent an appropriate balance between the different interests in this area. It should draw upon an assessment of:

- numerical impacts, including numbers of non-EEA partner visa applications, grants and refusals;
- social impacts on families in the UK and overseas who are seeking to live together in the UK;
- economic impacts, including assessment of any unforeseen costs to the public purse of the income requirement;
- integration impacts, to review whether the income levels of families with a non-EEA family member provide a useful indicator of their successful integration into life in the UK.

On the basis of evidence received in this inquiry, we would propose the following specific matters for consideration within the review:

2. The level of the income requirement should be reviewed with a view to minimizing any particular impacts on UK sponsors as a result of their region, gender, age or ethnicity.

3. 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.

4. The list of permitted sources of funds should be reviewed to ensure that they fully reflect the resources available to families. In particular:

- Prospective non-EEA partner earnings should be considered for inclusion in the rules, for example in circumstances where the non-EEA partner has a firm offer of employment or self-employment in the UK, or where there is reasonable expectation that the non-EEA partner will gain employment or self-employment after entering the UK;
- The rules relating to income from cash savings and from self-employment should be reviewed;

- Third party support, particularly that provided by a close family member such as a parent, should be considered for inclusion in the rules.

5. The current evidential requirements in Appendix FM-SE should be reviewed, in order to ensure that they are clear and easy for applicants to understand.

6. The Home Office should ensure that full and regular data relating to applications made under the non-EEA partner and adult dependent relatives route is made available, in order to support scrutiny of the impacts of policy changes in this area. This should include adequate disaggregation of family migration data within the International Passenger Survey and Home Office statistics to fully reflect different migrant inflows. The Home Office should make public, where possible, the reasons for refusal of applications by non-EEA partners and adult dependents. The current lack of reliable data on family migrants after their arrival here makes it difficult to study the short and long-term outcomes of family migration to the UK and this should be addressed.

Adult dependents

7. Government should review the rules affecting adult dependents. Consideration should be given to amending the rules to ensure that:

- Where the UK sponsor can demonstrate their ability to provide full financial support to an adult dependent relative in the UK, or where the relative themselves has the means to financially support themselves, they are able to do so;
- An adult dependent relative can be eligible for sponsorship where they are in need of support from the UK sponsor, but before they become fully physically dependent.

1. Introduction

This is the report of the All Party Parliamentary Group (APPG) on Migration inquiry into the impacts of new family migration rules that came into force on 9 July 2012. The inquiry was established in November 2012.

1.1. Inquiry terms of reference

The new APPG on Migration inquiry set out to review:

- the new minimum annual income requirement of £18,600 for British nationals and permanent residents seeking to sponsor a non-EEA spouse or partner, with a higher level for those additionally wishing to sponsor a child/ren.
- new rules on sponsorship of non-EEA adult/elderly dependents applying to come to the UK.

The APPG on Migration inquiry sought responses to the following:

- What does the available evidence suggest have been the impacts of the new minimum income requirement and new rules affecting elderly dependents on potential sponsors and/or applicants since July 2012?
- Does available evidence suggest that the new minimum income requirement for sponsoring non-EEA spouses and partners to come to the UK has been set at the right level?
- Please provide details of any other economic, social or practical considerations relating to the new minimum income requirement and the new rules affecting elderly dependents which could usefully inform this inquiry.
- The Coalition Government stated that its objectives in introducing new family migration rules were to tackle abuse, promote integration and relieve any burden on the taxpayer caused by family migration to the UK. Are the new family migration rules meeting these objectives? What contribution to the reduction of net migration can the new family migration rules be expected to make?
- What role does family life play in the integration process in the UK? How should the immigration system recognise and support the value of family life?

The inquiry did not consider evidence on other family migration rules.

1.2. Evidence

The inquiry issued an open call for evidence between November 2012 and January 2013 on the APPG on Migration website and circulated it amongst all APPG stakeholders (1830 parliamentarians, businesses, statutory agencies, charities and individuals). It was also circulated through statutory (including East of England Local Government Association, South West Councils), legal (including Migration and Law Network, the Immigration Law Practitioners Association), and charitable (including One North West, Migrants Rights Network, Joint Council for Welfare of Immigrants) networks.

Over 280 written submissions were received from individuals, charities, lawyers, local authorities, businesses and MPs. Committee members took evidence from eight witnesses in two oral evidence sessions in February and March 2013: Professor David Metcalf (Migration Advisory Committee); Barry O'Leary (Immigration Law Practitioners Association); Mahmud

Quayum (Camden Community Law Centre); Jill Rutter (Daycare Trust, appeared in a personal capacity); Duncan Hames MP; Anita Hurrell (Coram Children's Legal Centre); Dr Helena Wray (Middlesex University), and Dr Vivienne Nathanson (British Medical Association). It also heard brief statements and comments by stakeholders and individuals affected by the rule changes during oral evidence sessions.

Reports from two roundtables with black and ethnic minority organisations and law firms, which took place in London and Scotland in March 2013 and were conducted under the Chatham House rule, were also submitted as evidence to the inquiry.

A full list of written and oral evidence to the inquiry can be found at the back of this report. Written evidence submitted by organisations, in addition to oral transcripts and roundtable summaries, can be downloaded from the APPG on Migration website: www.appgmigration.org.uk. Individual written submissions have not been made publicly available for reasons of confidentiality. Where individual case studies have been quoted or referred to in this report, identifiable details have been changed.

1.3. Inquiry report

Having considered the full and wide range of evidence submitted to this inquiry, the Committee agreed that there are complex economic, legal and social considerations relating to the family migration route, many of which could not be dealt with in this report. A number of submissions referred to wider reforms within the family migration route, including the introduction of pre-entry English language testing and the impacts of measures to tackle abuse within the family migration route. In addition, we recognise the relevance of significant ongoing developments (in particular the application of Article 8 of the European Convention on Human Rights in UK courts, reforms to legal aid in relation to immigration cases, and the closure of the UK Border Agency), which may also be relevant to the issues identified within this report. Mindful of the MAC's advice to the Government being limited to economic issues, we also recognise that the new rules may represent a shift in the balance between the right to family life and wider considerations.

In this report, the Committee has chosen to focus on the emerging statistical and anecdotal evidence about the impacts of new family migration rules on individuals and groups seeking to sponsor a non-EEA partner and any children, or an elderly relative, to live with them in the UK. We have drawn broad conclusions and recommendations on this basis, which we hope will inform future debate and policy on the family migration rules.

1.4. Definitions

The below terms are used throughout this report:

- **'EEA national'** – a national of a country in the European Economic Area (the European Union member states in addition to Iceland, Lichtenstein and Norway) and Switzerland.
- **'Elderly dependent'** - a non-EEA national who is seeking to enter or has entered the UK as the parent or grandparent of a British citizen, person with settled status in the UK ('permanent resident'); or a person in the UK with refugee leave or humanitarian protection.

- **'Non-EEA partner'** – a non-EEA national who is the fiancé(e), proposed civil partner, spouse, civil partner, same sex partner or unmarried partner¹ of a person who is a British citizen; present and settled in the UK ('permanent resident'); or in the UK with refugee leave or humanitarian protection².
- **'UK sponsor'** - a British citizen, person with settled status in the UK ('permanent resident'); or person in the UK with refugee leave or humanitarian protection who is seeking to sponsor a non-EEA partner and any child dependent/s, or an adult dependent relative. The term 'UK sponsors' is used in this report to refer both to people who had successfully sponsored a non-EEA relative, and to those seeking to do so at the time of giving evidence to this inquiry.

2. Background to the rules

This section gives an overview of existing categories and relevant data for the family migration route. It outlines the Government's recent reforms to the family migration route in the UK, with a particular focus on the introduction of a new minimum annual income requirement for non-EEA partner and child dependent applicants, and new rules affecting adult dependent relatives coming to the UK.

2.1. The family migration route

The family migration route comprises all visa categories for non-EEA nationals entering, remaining or settling in the UK on the basis of a relationship with a British citizen or permanent resident. This includes fiancé(e)s, proposed civil partners, spouses, civil partners, same sex partners or unmarried partners, as well as child dependents and adult and elderly dependent relatives. It does not include dependents of migrants in other routes, such as the Points Based System.

Applicants within the family migration route can apply for a visa to enter the UK as a family migrant or, in certain circumstances, can 'switch' into a family migrant category having entered the UK on another visa. Family route migrants can settle in the UK provided they fulfill the appropriate requirements and, where applicable, have completed the required period of temporary residence. They are only entitled to access public funds once they have been granted settled status in the UK³.

¹ Defined by the Home Office as couples who have been living in a relationship akin to marriage or civil partnership for two years or more

² As defined in Immigration Directorate Instructions: Family members under the Immigration Rules, Section FM 1.0.

³ The UKBA website, at April 2013, states that: "Public funds include a range of benefits that are given to people on a low income, as well as housing support. These are: income-based jobseeker's allowance; income support; child tax credit; working tax credit; a social fund payment; child benefit; housing benefit; council tax benefit; state pension credit; attendance allowance; severe disablement allowance; carer's allowance; disability living allowance; an allocation of local authority housing; and local authority homelessness assistance. Public funds do not include benefits that are based on National Insurance contributions. National Insurance is paid in the same way as income tax and is based on earnings. Benefits to which a person is entitled as a result of National Insurance contributions include: contribution-based jobseeker's allowance; incapacity benefit; retirement pension; widow's benefit and bereavement benefit; guardian's allowance; and statutory maternity pay". Available online at: <http://www.ukba.homeoffice.gov.uk/visas-immigration/while-in-uk/rightsandresponsibilities/publicfunds/>

A separate set of rules applies to non-European family members of EEA nationals with a right to reside in the UK under the Immigration (European Economic Area) Regulations 2006. EEA nationals have free movement rights across the EEA, including the UK, but their non-European family members may need to apply for an EEA family permit before coming to the UK. There is no charge for an EEA family permit. Although supporting documentation relating to the exercise of EU treaty rights and residence, as well as the couple's relationship, must be provided in order to obtain a family permit, no minimum income requirement or other financial thresholds are applied.

Reforming the family migration route

In July 2011, the Government launched a public consultation on a broad set of proposed reforms to the family migration route in the UK⁴, stating that “*This government is determined to bring immigration back to sustainable levels and to bring a sense of fairness back to our immigration system... [W]e have been clear that we will take action across all the routes of entry to the UK, so we must also take action on the family migration route*”⁵. The key themes of the family migration consultation were to stop abuse, promote integration and reduce any burden to the taxpayer of family migration to the UK (UKBA, 2011)⁶. Further changes were also intended to define the basis on which a person can enter or remain in the UK on the basis of their family or private life, by unifying consideration under the rules and Article 8 of the European Convention on Human Rights (UKBA, 2012)⁷.

New rules on family migration, including the introduction of a minimum income requirement for non-EEA partners and child dependent applicants and new rules affecting the adult dependent route, were laid before Parliament on 13 June 2012 in Statement of Changes HC 194, and largely took effect from 9 July 2012. Technical amendments to the rules relating to the minimum income requirement were subsequently made through Statement of Changes CM 8423 (which came into force in July 2012); Statement of Changes HC 565 (September 2012); Statement of Changes HC 760 (December 2012); Statement of Changes HC 820 (December 2012) and Statement of Changes HC 1039 (April 2013). UKBA guidance on family migration applications is detailed in Appendix FM of the Immigration Rules.

2.2. The minimum income requirement

Previous rules

Prior to 9 July 2012, British citizens or permanent residents seeking to sponsor a non-EEA partner and any dependent children to enter or remain in the UK were required to demonstrate their ability to maintain and accommodate themselves, their partner and any dependents without recourse to public funds as specified⁸. Following a ruling of the Asylum and Immigration Tribunal

⁴ UK Border Agency (July 2011), Family Migration: A Consultation. Home Office: London. Available online at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/family-migration/consultation.pdf?view=Binary>

⁵ Home Secretary Theresa May in *ibid.*, p.3

⁶ *ibid.*, p.3

⁷ UKBA website (June 2012), Family migration changes announced: updated. Available online at: <http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2012/june/13-family-migration>

⁸ Public funds subject to such restrictions were: Attendance allowance; Carer's allowance; Child benefit; Child tax credit; Council tax benefit; Disability living allowance; Income-related employment and support allowance; Housing and homelessness assistance; Housing benefit; Income-based jobseeker's allowance; Income support; Severe

in 2006 a maintenance requirement, set at the level of Income Support, had been introduced for applicants. This required that the net income of the sponsor and non-EEA applicant, following deduction of housing costs, was not less than the equivalent amount that the family would receive in Income Support. As Income Support rates were subject to annual change, the level of the maintenance requirement was established via a calculation applied by UKBA caseworkers. In 2011, a post-tax income of £105.95 per week (or £5,500 per year), excluding housing costs, was required for a couple with no dependents⁹.

A number of sources were permitted towards meeting the maintenance requirement. The couple could provide evidence of sufficient independent means, employment of either/both parties, and/or sufficient employment prospects of either/both parties. Couples unable to meet the maintenance requirement could provide an evidenced undertaking of support from family members for the period until they could support themselves in the UK.

If successful, partners were granted a two-year period of residence in the UK, during which they were permitted to work in the UK but were subject to a 'no recourse to public funds' restriction, meaning that they could not access most benefits, tax credits or housing assistance in the UK. Following the two-year period of residence, partners and child dependents could apply for settlement in the UK.

Eligible partners and child dependents could also apply under indefinite leave to enter routes through which they could be granted immediate settlement in the UK. The partner (indefinite leave to enter) category required the UK sponsor and non-EEA partner to have been married or in a civil partnership for at least four years, and to be living together overseas.

Towards a new approach

In July 2011, the Government commissioned the Migration Advisory Committee (MAC) to advise on the level of a new, fixed minimum income requirement for sponsorship of non-EEA partners, asking "*What should the minimum income threshold be for sponsoring spouses/partners and dependents in order to ensure that the sponsor can support his/her spouse or civil or other partner and any dependents independently without them becoming a burden on the State?*"¹⁰. In November 2011, the MAC reported that "*[t]he issue of family migration is complex with economic, legal, moral and social dimensions. Nevertheless, the question that was put to us was an economic one and we address it on that basis*"¹¹.

The MAC considered a number of approaches in order to calculate the level of a new income requirement, focusing on a threshold that would apply to lone non-EEA partner applicants. It offered two possible levels arrived at by different means. It proposed that a gross annual income of £18,600 would be the level at which no income-related benefits would be received in a two-

disablement allowance; Social fund payment; State pension credit; Working tax credit. From UK Border Agency (July 2011), *op.cit.*, p.20

⁹ Migration Advisory Committee (November 2011), *Review of the minimum income requirement for sponsorship under the family migration route*, p.75. London. Available online at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/family-migration-route/family-migration-route.pdf?view=Binary>

¹⁰ *ibid.*, p.6

¹¹ *ibid.*, p.7

adult family. Alternatively a gross annual income of £25,700 per year would offset the potential costs of a two-adult family generated by public spending on services such as healthcare, education and defence. Further amounts would be needed in order to support any costs of dependent children. The MAC reported that 45% of non-EEA partner applicants in 2009 would not have met an income requirement of £18,600 per year, and that 64% would not have met a £25,700 income requirement¹². It did not refer to any evidence regarding the actual take-up of benefits among families with a non-EEA partner.

The MAC based its calculations on the assumption that the level of an income requirement, applied at the point of application and excluding housing costs, would be set nationally, stating that it did not see a clear case for regional variations in the level. It did not include third party support in its calculation of the income requirement, reporting that “*it might also be appropriate to include any third-party support that the sponsor’s family receives in the calculation [although it] seems likely that it would be difficult for the UK Border Agency to verify the extent of this support*”¹³. It also excluded the prior or potential income of the sponsored non-EEA partner in the UK from its calculations.

However, the MAC reported that it would be ‘*understandable*’ if the UKBA allowed some exemptions to be made with regards to the application of the income requirement, offering three examples: ‘*if the sponsor’s spouse/partner or dependent has a firm job offer in the UK, it might be reasonable to include their expected pay in the calculation; if there is a reasonable expectation that the spouse/partner or dependent will gain employment after they enter the UK, then it might also be reasonable to include their expected pay in the calculation; and it might be reasonable to make an exception in those cases where the sponsor works abroad at the time of the application*’¹⁴.

In June 2012, the Government announced the introduction of a minimum income requirement at the lower of the two levels proposed by the MAC.

Current rules

The entry into force of HC 194 on 9 July 2012 introduced a new minimum income requirement for British citizens and permanent residents seeking to sponsor a non-EEA partner and any dependent children to enter or remain in the UK. The new income requirement is applied at three stages: when the non-EEA partner and any children are applying for entry clearance (or leave to remain if they are switching into the route in-country); when applying for further leave to remain; and finally, when applying for settlement.

Non-EEA partners who meet all relevant requirements, including the income requirement, at all three stages may be eligible to reach settlement after five years. Prior to being granted settlement in the UK, non-EEA partners are permitted to work, but are subject to a ‘no-recourse to public funds’ restriction.

The partner (indefinite leave to enter) category has been removed from the Immigration Rules.

¹² *ibid.*, p.75

¹³ *ibid.*, p.52

¹⁴ *ibid.*, p.54

The income requirement for a UK sponsor to sponsor a non-EEA partner without dependent children is £18,600. A higher level applies where the application involves sponsorship of a child in addition to a partner, with an additional gross income of £3,800 required for the first child sponsored, and an additional £2,400 for each further child. The income requirement for a partner with one child is therefore £22,400, with two children is £24,800, and with three children is £27,200. Applicants must meet the relevant level of the income requirement through permitted sources, supported by specified evidence¹⁵. A small number of groups have been exempted from the new requirement¹⁶.

Decision-makers have no discretion or flexibility with regard to the level of the income requirement. Following Statement of Changes HC 1039, which took effect in April 2013, decision-makers now have some discretion with regard to evidence, and may defer an application pending receipt of further evidence, or request additional information or evidence before making a decision¹⁷.

The minimum income requirement can be met through five main sources of income/savings, provided they are supported by permitted evidence. Certain sources may be combined in order to meet the income requirement¹⁸:

1. Income from the salaried or non-salaried employment of the UK sponsor (and/or the non-EEA partner if they are in the UK with permission to work).

a) Those who are in salaried employment at the time of application, have been with their current employer for 6 months or more, and have been earning the necessary salary level for at least 6 months can count the gross annual salary (at its lowest level in the 6 months prior to the date of application) towards the income requirement. This can be combined with other specified sources to meet the requirement. Gross income from non-salaried employment is counted on the same basis, and includes that paid at an hourly or other rate or a variable amount according to the work undertaken.

b) Those who are in salaried or non-salaried employment at the time of application, but have been with their current employer for less than 6 months or have had a variable salary over a longer period can meet the income requirement in two parts. Firstly, they can count their gross annual salary at the date of application towards the application. Secondly, they must have received the required level of income, drawn from specified sources, in the 12 months prior to the application.

¹⁵ Full details of guidance relating to family migration are located in *Immigration Directorate Instructions Family Members under Appendix FM of the Immigration Rules, Annex FM Section FM 1.7, Financial requirement (April 2013)*: Available online at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDs/chp8-annex/section-FM-1.7.pdf?view=Binary>, and *Appendix FM-SE - Family members - specified evidence*: Available online at: <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/appendix-fmse/>.

¹⁶ A small number of people are currently exempt from the income requirement, including recipients of specified disability-related benefits and Carer's Allowance, and cases involving serving UK and foreign and Commonwealth armed forces personnel.

¹⁷ Statement of Changes in Immigration Rules HC 1039 (March 2013). House of Commons: London. Available online at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/statementsofchanges/2013/hc1039.pdf?view=Binary>

¹⁸ The following is a summary of the rules at the time of the report. For up-to-date detail see Annex FM Section FM 1.7 and Appendix FM-SE *op.cit.*

Where the UK sponsor is abroad and is returning to the UK to work, they do not have to be in work at the time of application, but must have a confirmed offer of salaried or non-salaried employment in the UK, starting within 3 months of their return, with an annual starting salary at or above the income requirement. The couple must in addition have received, in the 12 months prior to the application, the required level of income, drawn from specified sources.

2. Non-employment income of the UK sponsor and/or the non-EEA partner

Specified non-employment income of both the UK sponsor and applicant, received in the 12 months prior to the application, can be included towards the income requirement. Acceptable non-employment income sources include property rental (provided the property is not their main residence), dividends or other income from investments, stock and shares, bonds or trust funds, and higher education maintenance grants or stipends.

3. Cash savings of the UK sponsor and/or the non-EEA partner

In certain circumstances certain savings may be counted towards the £18,600 (or higher figure where there are children), provided they have been held in cash for 6 months in a personal bank account in the name of either / both of the parties. The amount is based on a formula, depending on the application being made (whether leave to enter / leave to remain / indefinite leave to remain). At all stages only savings above £16,000 can be counted. For entry clearance and leave to remain applications, the excess is subject to a formula (by way of division to reflect the period before a further application is required). An applicant without income and relying solely on savings for these applications needs to show £62,500 in cash. Cash savings cannot be combined with income from self-employment or as a Director of a specified type of limited company in the UK.

4. State (UK or foreign) or private pension of the UK sponsor and/or the non-EEA partner

The gross annual income from any state (UK basic state pension and additional or second state pension) or private pension received by either/both parties may be counted.

5. Income from self-employment of the UK sponsor (and/or the non-EEA partner if they are in the UK with permission to work).

Where the UK sponsor (and/or non-EEA partner if in the UK with permission to work) is self-employed at the date of application, they may use income from the last full financial year to meet the income requirement. Alternatively, they may choose to use an average of the income received in the last 2 full financial years to meet the income requirement. Different requirements and specified evidence apply to income from self-employment as sole traders, partners or people in a franchise; and to Directors of a specified type of limited company.

Sources that are not permitted towards meeting the income requirement include any subsidy or financial support from a third party (including the parents of the UK sponsor)¹⁹; income from

¹⁹ Other than child maintenance or alimony payments, student/research maintenance grants/stipends or permitted gifts of cash savings - see Annex FM Section FM 1.7, *op.cit.*, p13

others who live in the same household²⁰; loans and credit facilities; income related benefits and specified contributory benefits²¹, as well as child benefit, working tax credit and child tax credit.

2.3. Adult dependents

In July 2012, new rules also entered into force affecting applications under the adult dependent relative visa category. This route provides for elderly parents or grandparents, as well as other adult dependent relatives of British citizens or permanent residents, to apply to come to the UK. Successful applicants are granted permanent settlement in the UK immediately.

Under the previous rules, parents or grandparents aged 65 or over were eligible to apply for an adult dependent relative visa if they were wholly or mainly dependent on the UK-based family member for money, did not have other close relatives in their country who could support them, and could be adequately maintained in the UK without recourse to public funds and housed in accommodation owned or occupied by the UK-based sponsor. Other adult relatives (parents and grandparents under 65, and children, siblings and uncles and aunts) could also apply if they met those eligibility criteria and there were 'exceptional compassionate circumstances'.

Since July 2012, new applications must meet tighter requirements. Relatives must demonstrate that they "*as a result of age, illness or disability, require long-term personal care to perform everyday tasks e.g. washing, dressing and cooking ... [and are] ... unable even with the practical and financial help of a sponsor to obtain a required level of care in the country where they are living because either it is not available and there is no person in that country who can reasonably provide it or it is not affordable*"²².

The UK sponsor must also demonstrate that they can provide adequate maintenance, accommodation and care for the dependent relative without reliance on public funds, and must sign a sponsorship undertaking to confirm that they will be responsible for their care, without recourse to public funds, for at least 5 years.

The route can no longer be used by uncles and aunts of UK-based sponsors, or by applicants with unspent convictions in the UK or overseas.

²⁰ Except any dependent child of the applicant who has turned 18 and continues to be counted towards the higher income threshold the applicant has to meet until they qualify for settlement. See *ibid.*, p.13

²¹ Excluded income-related benefits include Income Support, income-related Employment and Support Allowance, Pension Credit, Housing Benefit, Council Tax benefit and income-based Jobseeker's Allowance. Excluded contributory benefits include contribution-based Jobseekers Allowance, contribution-based Employment and Support Allowance and Incapacity Benefit. See *ibid.*, p.14

²² *Immigration Directorate Instructions, Appendix FM Annex 6.0, Adult Dependent Relatives (December 2012)*. Find online at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/chp8-annex/section-FM-6.0.pdf?view=Binary>

3. Data on family migration

This section summarises recent data on family migration prior to and following the recent rule changes. This includes analysis by the Home Office (2011²³, 2012²⁴) as well as family migration data from the Home Office Quarterly Immigration Statistics.

3.1. Non-EEA partner migration

The Government Impact Assessment in June 2012 estimated that the introduction of a minimum income requirement of £18,600 would lead to an annual reduction in family route visas of between 36% and 46%, lowering the number of grants by between 13,600 and 17,800 per annum²⁵.

The family migration rule changes are too recent for full statistics relating to non-EEA partner and child dependent migration to the UK to be available. In addition, family migration levels have broadly declined since a peak in 2006, making it difficult to identify a causal relationship between policy changes and immigration data.

The following figures relating to non-EEA partner visa applications are available. In 2011, the Home Office issued a total of 50,829 partner visas (34,832 entry clearance²⁶ and 15,977 in-country²⁷). In 2012, this declined to 48,122 (31,541 entry clearance²⁸ and 13,290 in-country²⁹).

Home Office data issued in May 2013 shows that the number of entry clearance visas issued to those on the 'family route' as a whole fell from 44,585 to

Who are non-EEA partners and sponsors?

> Home Office data shows that the top five nationalities granted non-EEA partner visas in 2010 were Pakistan (16%), India (10%), United States (6%), Nepal (5%) and Bangladesh (4%). 59% of non-EEA partners in 2010 were from other countries across the world, including Thailand, the Philippines, South Africa, Australia, Canada and New Zealand.

> Further analysis suggests that 59% of UK sponsors in 2009 were UK-born British citizens.

> 68% of non-EEA partner applications in 2010 were made by female applicants, and 32% by male applicants.

> Home Office analysis suggests that the employment rate for male non-EEA partners after their arrival was 66% (compared to 64% for all UK males) and for female non-EEA partners was 44% (compared to 53% for all UK females) in 2010.

(All data from *Migration evidence and analysis*, Home Office, 2011)

²³ Home Office (July 2011), *Family migration: evidence and analysis (2nd edition)*. Available online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/115900/occ94.pdf.

²⁴ UK Border Agency (June 2012) *Family Migration Impact Assessment*. London, Available online at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/news/fam-impact-state.pdf>

²⁵ *ibid* p.20.

²⁶ Home Office (February 2013) *Immigration Statistics October to December 2012 Vol 4: Table be.06.q.f: Entry clearance visas issued by category and country of nationality: Family*. Available online at: <https://www.gov.uk/government/publications/data-tables-immigration-statistics-october-to-december-2012>

²⁷ Home Office (February 2013) *Immigration Statistics October to December 2012 Vol 4: Table ex.02.f: Grants of an extension of stay by category and country of nationality, excluding dependants: Family*. Available online at: <https://www.gov.uk/government/publications/data-tables-immigration-statistics-october-to-december-2012>

²⁸ Home Office (February 2013) *Immigration Statistics October to December 2012 Vol 4: Table be.06.q.f: Entry clearance visas issued by category and country of nationality: Family*. Available online at: <https://www.gov.uk/government/publications/data-tables-immigration-statistics-october-to-december-2012>

²⁹ Data provided by Immigration Minister Mark Harper, 7 March 2013. See Appendix C.

37,470 in the year to March 2013 – a drop of 16%³⁰. Declines were shown across all of the top 20 nationalities for family visas, with the United States seeing the largest fall (-935), followed by Nepal (-678) and India (-605). The 16% fall in family-related visas issued consisted of a 17% fall for non-EEA partners (to 28,426) and an 11% fall for children (to 3,982).

Home Office data for 2012 indicates that the refusal rate for non-EEA partner entry clearance applications rose from 19% in Q1 to 46% in Q4, whilst the refusal rate for non-EEA partners applying from within the UK rose from 10% in Q1 to 18% in Q4. On 18 March 2012, in answer to a parliamentary question, Immigration Minister Mark Harper stated that *“[i]t is not possible to identify how many of the refusals related to failure to meet the minimum financial income requirement introduced in July 2012 without the inspection of individual cases”*³¹.

Further Home Office records suggest that non-EEA partner applications were subject to significantly extended processing times after July 2012³². In Q4 of 2011, overseas non-EEA partner visa applications were subject to an average processing time of 26 days, whilst in-country further leave to remain partner applications were subject to an average of 72 days³³. In Q4 of 2012, the average processing times for these visa categories were 66 days and 246 days respectively. On 25 April 2013, in answer to a parliamentary question, Mark Harper stated that *“[f]or in-country applications we have put additional resource into the processing of applications from spouses and partners of non-EU nationals, and waiting times have reduced. The average waiting time for applications processed last week was around nine weeks [approximately 63 days]”*³⁴. It is not clear whether processing times for overseas and in-country non-EEA partner applications have also reduced.

3.2. Adult dependents

The new immigration rules appear to have had a significant impact on applications under the adult dependent relatives visa route. Home Office statistics show that, in 2011, 1,892 entry clearance visas were issued in the *‘Family route: other (for settlement)’* category. In 2012, 1,590 visas were issued within this category³⁵.

These statistics do not disaggregate the data relating to different groups of family migrants under this category, which includes adult dependent relatives as well as dependents under the refugee family reunion route. Management information from the UK Border Agency for the period between 9 July 2012 and 31 October 2012, however, shows that only one settlement visa was issued to an adult dependent relative during that period³⁶.

³⁰ Home Office (May 2013) *Immigration Statistics January to March 2013*. Available online at: <https://www.gov.uk/government/publications/immigration-statistics-january-to-march-2013/immigration-statistics-january-to-march-2013#family-1>

³¹ Immigration Minister Mark Harper, 7 March 2013. See Appendix C

³² Immigration Minister Mark Harper, 25 April 2013. See Appendix C

³³ In-country data relates to all in-country marriage applications and does not disaggregate non-EU spouse applications from these totals.

³⁴ Immigration Minister Mark Harper, 25 April 2013. See Appendix C

³⁵ Home Office (February 2013) *Immigration Statistics October to December 2012 Vol 4: Table be.06.q.f: Entry clearance visas issued by category and country of nationality: Family*. Available online at: <https://www.gov.uk/government/publications/data-tables-immigration-statistics-october-to-december-2012>

³⁶ Letter from Lord Taylor of Holbeach CBE to Lord Avebury, 18 December 2012, quoted in ILPA submission

4. The minimum income requirement

4.1. Overview

This section outlines the findings from evidence received by the Committee about the emerging impacts of the new minimum income requirement on families across the UK and overseas since July 2012. Due to the recent nature of the rule changes, the majority of evidence received by the Committee focused on the impacts of the minimum income requirement in relation to entry clearance applications (or leave to remain applications for those switching into the route in-country), rather than on the impacts of the income requirement at the further leave to remain and/or settlement stages.

Submissions were received from over 160 families who had been affected by the income requirement, as well from charities, lawyers, local authorities, businesses and MPs. The breadth of submissions suggested that the income requirement has affected British citizens and permanent residents from a range of socio-economic backgrounds. Many of the individuals who submitted evidence were British citizens whose non-EEA partners were nationals of Commonwealth countries including Australia, Pakistan and India, as well as the USA and Thailand. The majority of submissions considered by the Committee related to sponsorship of a non-EEA partner, meaning that the £18,600 income requirement applied.

The Committee heard about the impacts of the income requirement on the following groups:

- British citizens and permanent residents living in the UK, who were seeking to sponsor a non-EEA partner and any dependent children to join them;
- British citizens and permanent residents living overseas with a non-EEA partner and any children (British or non-EEA citizens), who were seeking to return to the UK as a family;
- British children who were in the UK and separated from a non-EEA parent, or who were overseas with their family and unable to return to the UK.

4.2. British citizens and permanent residents living in the UK

The Committee received evidence from over 100 families within which a British citizen or permanent resident was based in the UK, and was seeking to sponsor the entry of a non-EEA partner and any children based overseas. In these circumstances income from salaried or non-salaried employment or self-employment of only the UK sponsor, in addition to specified non-employment income, cash savings or pension income of both parties, can be counted towards meeting the income requirement.

Short-term impacts

The Committee heard that some British citizens and permanent residents had been surprised to find that they had been unable to sponsor the entry of a non-EEA partner, due to their difficulties in meeting the level of the income requirement: *“I served in the British Army for 9 and a half years, have a First Class Honours degree and my husband is also degree educated and currently earning more than I do [overseas]...I am antagonised by the fact that citizens of the EEA face none of these obstacles when bringing their non-EEA spouse to the UK, yet I, a British citizen and former member of the British Army, am not entitled to the same rights in my own country.”* (Individual submission, Yorkshire)³⁷

³⁷ Individual submission (online 80)

The Committee heard from a range of different people who had been unable to meet the £18,600 income requirement to sponsor a non-EEA partner, including some British citizens and permanent residents who were in full-time employment within healthcare, manual and service occupations across the UK. The Royal College of Nursing stated that the majority of NHS health care support workers (HCSWs) earn between £14,153 and £17,253 per annum³⁸. Individual submissions from people working as healthcare assistants³⁹, social care assistants⁴⁰ and nurses also reported full-time earnings below the minimum income requirement: *“If £18,600 is considered a minimum income for an adult to survive on, why as a clinically skilled NHS Aux. Nurse am I only earning £14,153 p.a. in my full time post? ... I am paying my taxes/rent without help/public funds.”* (Individual submission, West Midlands)⁴¹

A small number of individuals who were studying for professional qualifications, including trainee teachers undergoing the PGCE⁴² and NQT⁴³ training and veterinarians⁴⁴, described their inability to meet the income requirement. Further evidence was received from individuals employed as shop attendants⁴⁵, office administrators⁴⁶ and security guards⁴⁷, whose annual earnings fell below £18,600 per annum.

The Committee heard that a small number of people living within religious communities⁴⁸ or supported by other religious organizations such as the Salvation Army, who were seeking to sponsor a non-EEA partner, had been unable to do so⁴⁹. In these cases, the host institution was providing accommodation and support for living costs, leaving the UK sponsor’s salary and any other non-employment income below the required level.

A significant number of people in full-time employment at or above the level of the National Minimum Wage (set at the time of the inquiry call for evidence at £6.19 per hour, or £12,875.20 per annum for a 40 hour week⁵⁰) reported that they would be unable to meet the income requirement. According to evidence from the Migration Observatory, 47% of British citizens in employment in 2012 would not qualify to sponsor a non-EEA partner on the basis of their earnings⁵¹. Submissions from lower earners tended to add that they would be unlikely to meet the income requirement through any of the other permitted sources of income/savings.

The Committee heard that variations in average earnings across the UK have made it more difficult for some UK sponsors to meet the income requirement, depending on their area of

³⁸ Royal College of Nursing submission

³⁹ Individual submission (email 11)

⁴⁰ Individual submission (online 96)

⁴¹ Individual submission (online 111)

⁴² Individual submission (online 49)

⁴³ Individual submission (online 58)

⁴⁴ Individual submission (online 114)

⁴⁵ Individual submission (email 10)

⁴⁶ Individual submission (online 162)

⁴⁷ Individual submission (online 148)

⁴⁸ ILPA submission

⁴⁹ Salvation Army submission

⁵⁰ On 15th April 2013, the Government announced that the NMW will increase to £6.31 per hour for adults from 1 October 2013

⁵¹ Migration Observatory submission

residence. Analysis by the Migration Observatory indicates that, of British people in employment in June 2012, 48% of working people in Scotland, 51% in Wales and 56% in Merseyside earned below the income requirement required to sponsor a non-EEA partner⁵². Wages in Northern Ireland were also reported to be lower than the average UK salary⁵³. Many of the individuals who described their circumstances to the Committee, in particular those based outside London where living costs are often lower, considered that their full-time earnings would be adequate to support a family without recourse to public funds.

Workers in London were reportedly more likely than workers based elsewhere in the UK to be able to meet the income requirement, with only 29% earning below £18,600 per annum in June 2012⁵⁴. This was partially attributed to the inclusion of London Weighting within salary levels for some public sector occupations, and the operation of a higher Living Wage level in London for participating employers⁵⁵. The Committee heard that such wage variations could disadvantage public sector workers based outside London who wished to sponsor a non-EEA partner: *"[I]f I was doing exactly the same job for the NHS in London I would meet the financial requirement and would be able to bring my wife here so I could carry on with my work and live a happy life."*⁵⁶ (Individual submission, West Midlands)

Evidence suggested that the income requirement had impacted on lower-earning sections of the UK working population seeking to sponsor a non-EEA partner and any children. A submission from Middlesex University anticipated that the income requirement would disadvantage women, as the full-time gender pay gap currently stands at 14.9%⁵⁷. An MP for a constituency in South East England reported: *"most of the people who have approached me because their spouse cannot join them are women, often unable to work full time because of childcare commitments"*⁵⁸. Women's wages are particularly low in Wales, West Midlands and the North East, making it less likely that they would be able to meet the income requirement⁵⁹.

Particular age groups were also described as at a disadvantage. Some submissions reported the difficulties for young adults, including British school or university leavers who were less likely to immediately secure employment at the required income level⁶⁰. Some elderly UK sponsors also described their inability to meet the income requirement. A visa consultant in Thailand stated that, in his experience, the level of the income requirement means that *"a British sponsor living on a UK state pension, or a small company pension, can never bring his wife to the UK"*⁶¹. An MP for a Scottish constituency submitted that *"casework suggests that this limit is preventing elderly couples from being able to live together in the UK."*⁶²

⁵² Migration Observatory submission

⁵³ NICEM/Belfast Migrant Centre submission

⁵⁴ Migration Observatory submission

⁵⁵ At the time of writing the Living Wage rates were £8.55 per hour in London and £7.45 for the rest of the UK.

Available online at: <http://www.livingwage.org.uk/>

⁵⁶ Individual submission (online 33)

⁵⁷ Middlesex University submission

⁵⁸ Fiona MacTaggart MP submission

⁵⁹ Middlesex University submission

⁶⁰ JCWI submission

⁶¹ Individual submission (online 65)

⁶² Gordon Banks MP submission

The Committee received some evidence that the income requirement had already impacted on ethnic minority communities with lower than average earnings⁶³. A number of submissions pointed to the difficulties for Pakistani and Bangladeshi communities, especially women, seeking to sponsor a non-EEA partner⁶⁴. A worker for the City of Bradford Metropolitan District Council reported that the income requirement had already had a disproportionate impact on the local Pakistani community: *“Keighley is a low wage high unemployment area and Pakistanis are disproportionately affected by the state of the labour market. These rules make it impossible for all but the very few to choose a partner from abroad.”*⁶⁵

Submissions from organizations working with ethnic minority communities in London and Scotland reported that the income requirement may have had wider impacts on the integration of some ethnic minority community members. A representative of a Scottish organization working with Asian women told the Committee that the new family migration rules had resulted in some people feeling *“that this country doesn’t want them”*⁶⁶.

Long-term impacts

The Committee received some evidence indicating that the income requirement is likely to have long-term social impacts in the UK. The Brussels-based Migration Policy Group reported that *“the UK has now set an income threshold that is higher than in all other major Western countries of immigration, [except] oil-rich Norway”*⁶⁷. A small number of individual submissions described how UK sponsors had chosen to move overseas in order to live with their non-EEA partner. In a small number of cases seen by an organisation working with ethnic minorities in Scotland, the UK sponsor and non-EEA partner had moved to another country in the European Union in order to benefit from European law on family reunification before potentially returning to the UK in the future⁶⁸.

In the majority of individual submissions, however, UK sponsors were not intending to relocate overseas, for financial, social or family reasons. Most reported that they were now anticipating long-term separation from family members. A small number of submissions from UK sponsors stated that they had experienced mental health difficulties as a result of the separation⁶⁹. It was suggested that family breakdown could be expected to occur in some cases where UK sponsors were indefinitely separated from a non-EEA partner⁷⁰.

Submissions also suggested that the income requirement may have resulted in wider economic impacts since July 2012, including an increase in benefit claims (particularly in families with children), an increased burden on state care services, and a loss of potential tax revenue from non-EEA partners unable to enter the UK.

⁶³ ILPA submission

⁶⁴ ILPA submission, Middlesex University submission, Sangat Centre submission

⁶⁵ City of Bradford Metropolitan District Council submission

⁶⁶ BME roundtable submission, Scotland

⁶⁷ Migration Policy Group submission

⁶⁸ BME roundtable submission, Scotland

⁶⁹ Individual submission (online 41)

⁷⁰ Mahmud Quayum, Camden Community Law Centre, oral evidence session, February 2013

Some UK sponsors informed the Committee that they were claiming welfare benefits that would not be needed if their non-EEA partner were able to join them and work in the UK⁷¹. Researchers at Middlesex University submitted that *“the consequence of admitting a partner will be not an increase but a decrease in claims for most existing benefits. This is not surprising: with two potential incomes, a family unit is more likely to earn above the cut-off point for welfare”*⁷².

The Committee heard that the financial pressure on UK sponsors separated from a non-EEA partner was particularly acute for those who were caring for children (usually British citizens) in the UK. In some cases individuals reported that, as a single parent, they had had to claim welfare support such as child tax credits and housing benefit in order to support the family: *“I am a British citizen. I have a 8 month old daughter with my Moroccan husband... I have had to go on benefits for the first time in my life as I can't afford to eat without them.”* (Individual submission, South East England)⁷³

The Committee heard about cases in which the non-EEA partner seeking to enter the UK would play a caring role, potentially alleviating pressure on support services for UK-based families or freeing up the UK parent to work: *“My Canadian-born wife (who I have been married to since June 2007) has to remain in Canada... I currently care for my seventeen year old Autistic daughter... My wife being able to immigrate to the UK would benefit my daughter's emotional and mental health [and] would mean that I would be available for wider employment opportunities.”* (Individual submission, Wales)⁷⁴

Finally, the Committee received evidence suggesting that there could be a longer-term loss of tax revenue from preventing the entry of some non-EEA partners to the UK. In some cases considered by the Committee, the non-EEA partner was in medium or high-paid employment overseas and was reportedly likely to secure employment following their entry to the UK. The submission from Middlesex University argued that the economic contribution made by non-EEA partner earnings had not been fully considered in the Government Impact Assessment of the income requirement⁷⁵.

4.3. British citizens and permanent residents living overseas

The Committee received evidence from over 60 families within which UK sponsors, based overseas with their non-EEA partner and any children, were seeking to return to the UK as a family unit. In these cases, in order to meet the income requirement from the permitted salaried and non-salaried employment sources, the UK sponsor must both be able to show sufficient overseas earnings within the past 12 months, and have a confirmed job offer with a salary at or above the required level to begin within three months of return to the UK. Almost all of the families who submitted evidence to this inquiry had been unable to meet the income requirement and had therefore either separated while the UK sponsor returned to the UK, or had remained overseas.

⁷¹ Individual submission (online 70)

⁷² Middlesex University submission

⁷³ Individual submission (online 88)

⁷⁴ Individual submission (online 148)

⁷⁵ Middlesex University submission

The Committee heard that UK sponsors within a range of circumstances had found it difficult to show evidence both of prior earnings overseas and of a confirmed job offer in the UK. Submissions reported that in some cases the UK sponsor had been in employment overseas but their earnings fell below the required level. This had affected some UK sponsors employed in professional occupations in countries where pay rates did not compare favourably to the UK: *“I particularly point out that where the income threshold is difficult to reach in the UK, the exchange rate renders it entirely impossible to reach in other countries (including all Commonwealth countries). As barristers, we are top earners here, but when converted into pounds we fall short.”* (Individual submission, South Africa)⁷⁶

In addition, some submissions were received from workers in voluntary or support roles overseas, whose earnings were considerably lower than the income requirement. In a small number of cases, UK sponsors had been working abroad as missionaries and development workers⁷⁷ or for UK cultural institutions⁷⁸, and had received a local salary below £18,600 per annum.

In other cases, the UK sponsor could not demonstrate prior overseas earnings at the required rate because they had not been in employment overseas. This was usually because the non-EEA partner was the main earner. PricewaterhouseCoopers reported the following case: *“Our client, an Australian national, is a Chief Financial Officer with a multinational company in Dubai. His current salary package is £250,000 per annum. Our client is married to a British national and they have children together... However, despite his earnings abroad and prospective earnings in the UK of £400,000 per annum as well as having property in the UK valued over £3.5 million, our client is not eligible under the new threshold... This is because his earnings overseas could not be considered and his wife is not employed nor does she intend or need to undertake employment in the UK.”*⁷⁹

The Committee heard that, in some cases where the UK sponsor could demonstrate prior overseas earnings at the required level, they had been unable to secure a confirmed job offer in the UK. Some UK sponsors had chosen to return to the UK with the aim of securing employment at or above the level of the income requirement, resulting in a period of separation of at least 6 months from family members⁸⁰: *“I moved to the UK with [our 4 year old] son to find a job with a salary of £18,600 for 6 months, so my wife could qualify for a spouse visa, leaving her alone in the US. I am living in a rural location with my parents. Salaries of £18,600 in this area are uncommon so I’m looking for work in London.”* (Individual submission, South East England)⁸¹

Some families reported that they were unwilling to be separated, citing their concern that the UK sponsor might be unable to secure appropriate employment in the UK. In these cases some families had chosen to remain overseas to wait for a change in policy, or had decided not to return to the UK at all: *“I have been here in Australia for 45 years and I wanted to spend these*

⁷⁶ Individual submission (online 20)

⁷⁷ Individual submission (email 59)

⁷⁸ Individual submission (email 48)

⁷⁹ PricewaterhouseCoopers LLP submission

⁸⁰ Individual submission (email 18)

⁸¹ Individual submission (email 30)

later years in my home country which is Scotland. We got a shock when my Australian husband of 43 years applied for a visa.... We intended buying a house in Scotland and we have more than enough money to keep ourselves. ... We have decided to stay here in Australia as we feel we now don't want to go to a country that obviously does not want us.” (Individual submission, Australia)⁸²

The Committee heard about the wider impacts of these restrictions on family members based in the UK. In a small number of cases, British citizens based outside the UK reported that they were unable to return with their non-EEA partner and any children in order to care for ageing parents or other family members living in the UK: *“My parents are elderly but not completely dependent, with my father hospitalised with Alzheimers. They are in the UK, I am in Australia. I am British and have been considering a return to the UK with my Australian husband to be nearer them and to provide more support and be part of the load sharing my other siblings currently undertake... [But a] return is currently not possible as my spouse and I do not meet the minimum financial requirements.” (Individual submission, Australia)⁸³*

4.4. British children in the UK and overseas

The Committee particularly noted the emerging impacts of the income requirement on children. 45 of the families who submitted evidence reported that their inability to meet the income requirement had led to the separation of children, including British children, from a non-EEA parent or wider family members. The particular impacts of the rules on children were also highlighted by lawyers and charities.

The UK’s immigration management objectives are to be considered in relation to the UK’s international obligations under the UN Convention on the Rights of the Child, including the obligation to treat the best interests of children as a primary consideration. This is translated into domestic law through section 11 of the Children Act 2004 and Section 55 of the Borders, Citizenship and Immigration Act (BIA) 2009. Article 8 of the European Convention on Human Rights (ECHR), given effect in the UK through the Human Rights Act 1998, also protects the right to a private and family life and is to be interpreted in accordance with the UNCRC.

Coram Children's Legal Centre informed the Committee that, where a family application involves child dependents or where children are involved, Home Office duties under section 55 of the BIA 2009 require it to discharge its functions having regard to the need to safeguard and promote the welfare of children who are in the UK. This duty is fully engaged in entry clearance and further leave to remain applications where a child is in the UK. The UK Government is also obliged to give effect to the best interests of the child in relation to entry clearance applications where a child is outside the UK, pursuant to its international obligations under the UNCRC and Article 8 of the ECHR⁸⁴.

The Committee did not seek specific evidence on how far the best interests of children, including British children, had been considered by decision-makers in non-EEA partner applications since July 2012. However, it noted the findings of UK Border Agency Chief Inspector John Vine on this matter, following an inspection of non-EEA partner applications

⁸² Individual submission (online 132)

⁸³ Individual submission (online 157)

⁸⁴ Coram Children’s Legal Centre submission and oral evidence session, March 2013

during the period April to October 2012. In January 2013, the Chief Inspector reported that: "*We were disappointed to find that specific consideration was given to the best interests of the child in only 1 of the 21 further [non-EEA partner] leave and settlement cases where leave was refused outright... [W]e found no evidence that the best interests of the child had been referred to specifically in any of the 39 [non-EEA partner entry clearance] cases that had been refused and involved children in the UK*"⁸⁵.

British children living in the UK

A number of individual submissions received by the Committee reported that the introduction of the income requirement had led to the separation of British children in the UK from a non-EEA parent living overseas. In some cases the non-EEA parent had applied for entry clearance or leave to remain in the UK and been refused. In other cases the non-EEA parent had not applied, as it was apparent that their application would be unsuccessful.

The Committee heard that the family's inability to meet the income requirement had led to the separation of some babies and young children from a non-EEA parent. Some UK sponsors reported that their non-EEA partner had not yet met their child, in some cases because they had also been unable to secure a UK visitor visa: "*I am a British citizen and ... my partner is Albanian... My baby is now two months old and an absolute joy to me. His father has only seen him via Skype. I'm now struggling to manage the final year of my degree on my own with a newborn.*" (Individual submission, East England)⁸⁶

Written evidence from Coram Children's Legal Centre reported a small number of cases in which children had been separated from a parent at formative stages in their development. "*Coram Children's Legal Centre was contacted by a family divided by the new family migration rules. The mother is a non-EU citizen who is currently abroad and her husband and two sons, aged just five months and 18 months, all British citizens, are in the UK. The separation means that the mother has had to stop breastfeeding her five-month-old baby*"⁸⁷. Although the Committee did not seek specialist evidence regarding the developmental or neurological impacts of separation of children from a parent, academic witnesses acknowledged the growing body of evidence that suggests that such separation may have significant impacts⁸⁸.

All of the affected families who submitted evidence to the inquiry reported that they wished to live together as a family in the UK. However, some stated that the UK sponsor's circumstances as a single parent had reduced the likelihood of their being able to meet the income requirement into the future. A small number of families had chosen to move overseas as they did not anticipate being able to live together in the UK in the foreseeable future. This had resulted in the separation of the children from wider family networks in the UK.

British children living overseas

The Committee also heard about the impacts of the income requirement on children, including British children, who were living outside the UK with one British parent and one non-EEA parent

⁸⁵ Independent Chief Inspector of Borders and Immigration (January 2013) An inspection of applications to enter, remain and settle in the UK on the basis of marriage and civil partnerships: April – October 2012, London

⁸⁶ Individual submission (email 39)

⁸⁷ Coram Children's Legal Centre submission

⁸⁸ Anita Hurrell, Coram Children's Legal Centre, Oral evidence session, March 2013

and were unable to return to the UK as a family. This included some children within medium and high-income families (see Section 4.3). In all such cases involving children received by the Committee, the family was seeking to return to the UK. Many parents reported that this was because they wished their children to attend school in the UK and benefit from wider family, cultural and social networks.

In cases where the family had been unable to re-enter the UK, some submissions reported that children had been indefinitely separated from grandparents and wider family networks: *“The reason why the rule changes impacts us, as British citizens, is because we have a 25-year-old son who... recently married a [non-EEA national] girl. They are expecting their first child - our first grandchild. The new rules affect us because they make it harder for them to settle in the UK in the future to the point where they may be put off altogether. Such a situation will potentially deny us the precious opportunity to see our grandchild grow up in this country.”* (Individual submission, North-East England)⁸⁹

The Committee also heard that some non-EEA children had been prevented from entering the UK with their non-EEA parent as a result of the higher income requirement needed in order to sponsor their entry. This was raised in relation to the separation of a small number of British nationals from their non-British stepchildren.

4.5. Meeting the income requirement

The Committee received a range of evidence highlighting issues in relation to the permitted sources of income/savings to meet the income requirement, as well as further information about the application and decision-making processes. It heard that, in many cases, applicants had found it difficult to understand the rules regarding permitted sources and evidential requirements.

Permitted sources of income/savings

The sources that can be used in order to meet the minimum income requirement are employment income, non-employment income, cash savings, pensions, and income from self-employment or as a Director of a specified type of limited company in the UK. The main issues relating to meeting the income requirement through employment income have been highlighted in previous sections. This section outlines the evidence relating to other permitted sources.

The Committee received evidence on the difficulties of meeting the income requirement both through non-employment income and through savings. PricewaterhouseCoopers reported that *“[t]he alternative route to meeting the threshold – demonstrating income from non-employment sources and savings, is rigorous and ... can be beyond applicants, including those high income earners and those with substantial investments”*⁹⁰. The Committee is aware that Statement of Changes HC 1039, which took effect from 1 April 2013, has widened the permitted non-employment sources, ensuring that funds in investments, stocks, shares, bonds or trust funds, held for 6 months by one or both parties, if transferred into cash can now be used towards meeting the requirement⁹¹. These changes have been too recent for the Committee to assess any impacts.

⁸⁹ Individual submission (email 43)

⁹⁰ PWC submission

⁹¹ Statement of Changes HC 1039, March 2013

Particular difficulties were described in relation to the use of cash savings in order to meet the income requirement. A Scottish law firm reported that many applicants cannot meet the income requirement through the use of savings because such substantial sums – up to £62,500 in order to meet the income requirement from this source alone – are required⁹². Other submissions, including from the Immigration Law Practitioners Association, argued that it was financially inadvisable to hold savings in cash for the required period of 6 months⁹³. One individual reported that he had mortgaged his home in order to ensure that £62,500 could be held in a bank account for the required 6 month period⁹⁴.

A number of submissions reported difficulties for fully or partially self-employed people in meeting the minimum income requirement to sponsor a non-EEA partner to come to the UK. Fragomen LLP reported the case of a client ('X') who was working as a specialist contractor at a London museum, working on a 6-month rolling contract: *"In practice X earned over the £18,600 prescribed for a spousal application...However, because X worked on a rolling short-term contract, his predicted annual gross income at the point of application was lower than the amount he would ultimately receive for that year. In order for X to meet the necessary gross salary, he was required to (legitimately) contract with three separate employers on three new fixed term contracts. The total combined earnings totaled around £14,000 leaving a shortfall of over £4,000... X then had to find savings of over £26,000 to meet the requirements"* (Fragomen LLP submission).

Some individuals referred to the restrictions that apply to the use of income from self-employment. The Committee heard about the difficulties caused by the requirement that, where a person is seeking to meet the income requirement through income from self-employment, they must rely on income from the last full financial year or an average of the last two financial years. One individual pointed out that this places self-employed UK sponsors at a disadvantage compared to those who are employed, who generally are required to show their earnings only for the previous 6 months⁹⁵. Individual submissions also objected to the restriction on combining cash savings with income from self-employment, with one individual saying that he *"could not understand why self-employed people would be singled out in this way"*⁹⁶.

The Committee heard that two common sources of financial support for some families – earnings of the non-EEA partner and third party support from other family members – could not be included in most non-EEA partner applications. Some submissions reported the problems caused by the inadmissibility of non-EEA partner earnings in entry clearance applications. PWC reported that *"[t]he new requirement does not take into consideration the non-EEA applicants who are high income earners and can support their families in a lifestyle which would not require their UK sponsor to be in employment"*⁹⁷.

⁹² BME roundtable, Scotland

⁹³ ILPA submission; individual submission (online 93)

⁹⁴ Individual submission (online 91)

⁹⁵ Individual submission (online 76)

⁹⁶ Individual submission (email 40)

⁹⁷ PricewaterhouseCoopers LLP submission

The Committee heard that high-earning non-EEA partners may be able to apply to enter the UK under a different route in the Immigration Rules - for example, Tier 2 of the Points Based System. However, the Immigration Law Practitioners Association reported this is not always possible, particularly if a potential employer is not already a licensed sponsor with the Home Office, or if the position could be filled by a UK national⁹⁸.

The Committee also received evidence of cases in which a third party – usually the UK sponsor’s parent - was willing to act as a financial guarantor for the couple, but could not because this was not a permitted income source. A submission made by an MP for a Yorkshire constituency reported that, in the case of one of his constituents, family support “*would have ensured that there would have been no recourse to public funds*”⁹⁹. In other cases submitted to the Committee, a close family member had offered to provide free accommodation for the couple. “*My daughter [British] and her [non-EEA national] husband decided after being together for 4 years that they wanted to have a child and move to the UK so that she could have a baby near to her family... We have a large house with plenty of room for [them] and we expect them to stay with us until they get jobs, a house etc. We can support them in the meantime.*” (Individual submission, North West England)¹⁰⁰

An organization working with the Bengali community in London reported that the exclusion of third party support from the list of permitted income sources could disadvantage people from some Asian communities where family support for young couples is commonplace¹⁰¹.

Evidential requirements

The Committee heard other concerns about the evidential requirements specified in the Immigration Rules. ILPA reported that “[u]nder the new rules, form is valued over substance... The inflexible evidential requirements exclude many who are able to support themselves without recourse to public funds, including many persons in higher income brackets”¹⁰². They reported that the process of making an application “*can be problematic*”, as a result of confusion generated by online application forms and accompanying paper appendices¹⁰³. For example, “*a self-employed sponsor must provide more than 10 specific documents evidencing income*”¹⁰⁴. Some individual submissions to the inquiry referred to a lengthy processing period for in-country applications¹⁰⁵.

The Committee received evidence from a small number of individuals who expressed dissatisfaction with the level of discretion permitted on the part of decision-makers, in particular regarding their consideration of incomplete applications¹⁰⁶. Statement of Changes HC 1039 has confirmed that decision-makers have had the discretion to contact applicants to request further

⁹⁸ ILPA submission

⁹⁹ Paul Blomfield MP

¹⁰⁰ Individual submission (online 154)

¹⁰¹ BME roundtable submission, London

¹⁰² ILPA submission

¹⁰³ ILPA submission

¹⁰⁴ ILPA submission

¹⁰⁵ Individual submission (online 85)

¹⁰⁶ Individual submission (online 103)

information or documents since April 2013 (see Section 2.1). It is not known whether this change has addressed the concerns raised by submissions to this inquiry on this matter.

Finally, wider concerns were raised about the accessibility of advice regarding the family migration rules, relating to the withdrawal of immigration cases from the scope of legal aid from April 2013¹⁰⁷. This may result in increased pressure on MPs who could see an increase in their family migration caseload.

5. Adult dependents

This inquiry received a number of submissions regarding the new rules on adult dependents (see Section 2.3), including from 15 families who had been affected by the new rules. It also received evidence from a number of charities and professional associations regarding the immediate impacts of the new rules and their future implications. Following the terms of reference for this inquiry, all such submissions focused on the impact of the new rules on elderly parents and grandparents of British citizens or permanent residents.

In some of the individual submissions heard by the Committee, the UK sponsors were medium or high-earning professionals, who had lived in the UK for a number of years and now had British citizenship. Most were originally from Commonwealth countries including India, Pakistan and Singapore, as well as the USA and Australia. In a small number of cases heard by the Committee, the UK sponsor was the only relative of the elderly relative living overseas. In all submissions, the UK sponsor wished to bring their elderly relative to the UK in order to provide family support alongside any professional social and medical care.

5.1 Short-term impacts

All submissions reported that the new rules are now considerably more difficult to meet than the previous requirements. The new requirement that relatives are *'unable even with the practical and financial help of a sponsor to obtain a required level of care in the country where they are living because either it is not available and there is no person in that country who can reasonably provide it or it is not affordable'* appears to have made it particularly difficult for an adult dependent application to succeed¹⁰⁸.

The Committee heard that something of a 'Catch 22' situation now exists: a UK sponsor who does not have the means to support an elderly relative will fail to meet the rules. However, a UK sponsor who does have the means to do so will also fail to meet the rules, because it will be considered likely that they could fund care services in their relative's home country¹⁰⁹. This has apparently made it all but impossible for an adult dependent relative application to succeed.

¹⁰⁷ JCWI submission

¹⁰⁸ Appendix FM Annex 6.0 UKBA. Available online at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/chp8-annex/section-FM-6.0.pdf?view=Binary>

¹⁰⁹ Individual submission (email 63)

The Committee received submissions from some UK sponsors who reported that they would be willing and able to financially support an elderly relative in the UK. This included people who were high earners in the UK, including NHS consultants¹¹⁰ and legal professionals¹¹¹: *“My current salary is well over GBP 100,000, and I am a practicing solicitor in the City of London. I have a five-bedroom house, which I purchased with a view to getting my widowed mother to come live with me... There is no reason for her not to be here, other than the fact that she is another number. There is no burden on the public purse - she is retired, not seeking employment and I have the means to support her and provide for her fully.”* (Individual submission, East England)¹¹²

The Committee heard that some UK sponsors had experienced difficulties because their parents had funds of their own, as they would be more likely to be considered able to care for themselves overseas. The International Care Network in Bournemouth reported that *“[w]e have found that potential sponsors (those wanting to bring in an elderly parent) find it incomprehensible that if their parent has resources of their own, this makes the application more likely to fail”*¹¹³.

A small number of submissions also referred to the introduction of a higher care threshold within the rules, meaning that adult dependents must demonstrate they require help with everyday tasks such as washing and cooking. This would result in longer-term separation of adult dependents from their UK-based relatives, and could mean that some elderly relatives would be too ill to travel. An individual submission reported *“We are effectively being told by the current Government to abandon my mother left widowed, and that she has to be ‘vegetating’ before her entry to the UK can be even considered.”*¹¹⁴ (Individual submission, Scotland)

The British Medical Association objected to the retrospective impact of the new rules on UK sponsors, in particular medical professionals, who had already committed themselves to life in the UK in the expectation that they would be able to support their elderly parents or grandparents in the future¹¹⁵. One individual described how the rules had placed UK sponsors in an *“impossible, inhumane position”* (Individual submission, London)¹¹⁶.

5.2 Long-term impacts

The Committee also received evidence regarding the medium and long-term impacts of the new adult dependent rules. The British Medical Association suggested that the new rules would be likely to result in the loss of valuable skills from the National Health Service. 24% of the UK medical workforce in 2011 reportedly received their medical qualification outside the EEA, with 49% of doctors from outside the UK employed within Staff, Associate Specialist and Specialty Grade medical occupations, and 24% of non-UK doctors engaged as Consultants¹¹⁷.

¹¹⁰ Individual submission (online 136)

¹¹¹ Individual submission (online 8)

¹¹² Individual submission (online 8)

¹¹³ International Care Network submission

¹¹⁴ Individual submission (email 63)

¹¹⁵ BMA submission

¹¹⁶ Individual submission (online 163)

¹¹⁷ BMA submission

The BMA submission cited the case of a former NHS consultant, whose sister and brother-in-law were also senior medical professionals in the UK: *"I am a British citizen, and work as consultant forensic psychiatrist in Singapore. I am 44 years old, and at the peak of my career... Prior to leaving the UK in July 2011, I was working as a full time consultant in the NHS in North West England. I relocated to Singapore because it allowed my parents to stay with me... Now my sister and her family are also considering relocating here so that the family could be together."*¹¹⁸. The BMA reported that the new rules could discourage overseas medical students and doctors from coming to the UK, leading to the UK losing out to other countries on international talent¹¹⁹.

One submission reported that, for those families affected by the new rules, *"[t]he only option left with British citizens, to be able to live with and care for their dependent parents, is to emigrate"*¹²⁰ (Individual submission, Scotland). Some UK sponsors were now considering leaving the UK, or had already done so, in order to care for their elderly relative overseas¹²¹. A member of the medical profession in Scotland reported that a number of his colleagues were re-considering their employment and were seeking to move their families (including British children) to India in order to look after elderly dependent relatives¹²². This was particularly the case among individuals from communities with a strong cultural practice of caring for elderly relatives.

The Committee heard from other families who reported that it would be difficult for them to emigrate overseas to care for an elderly relative. Most of those people who submitted evidence directly to the Committee were British citizens and had established lives for themselves and their family members in the UK, often over a period of decades. They had commitments here including employment, property and children in education, meaning that emigration would likely be costly and disruptive: *"I am a US citizen... about to become a naturalised UK citizen... I am the only child of my elderly parents, who are in declining health in the US ... The recent change in the rules for elderly dependents means that I now face an unbelievable choice, and one that I never imagined I would be forced to make: abandon my parents at a time of crucial need, or abandon my life in the UK to look after my parents."* (Individual submission, South East England)¹²³

¹¹⁸ BMA submission

¹¹⁹ BMA submission

¹²⁰ Individual submission (email 3)

¹²¹ BMA submission

¹²² BME roundtable, Scotland

¹²³ Individual submission (online 163)

6. Recommendations

Minimum income requirement

1. Government should commission an independent review of the minimum income requirement, drawing on evidence of its impacts since July 2012. The review should aim to establish whether the current level of the income requirement and permitted sources in order to meet it represent an appropriate balance between the different interests in this area. It should draw upon an assessment of:

- numerical impacts, including numbers of non-EEA partner visa applications, grants and refusals;
- social impacts on families in the UK and overseas who are seeking to live together in the UK;
- economic impacts, including assessment of any unforeseen costs to the public purse of the income requirement;
- integration impacts, to review whether the income levels of families with a non-EEA family member provide a useful indicator of their successful integration into life in the UK.

On the basis of evidence received in this inquiry, we would propose the following specific matters for consideration within the review:

2. The level of the income requirement should be reviewed with a view to minimizing any particular impacts on UK sponsors as a result of their region, gender, age or ethnicity.

3. 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.

4. The list of permitted sources of funds should be reviewed to ensure that they fully reflect the resources available to families. In particular:

- Prospective non-EEA partner earnings should be considered for inclusion in the rules, for example in circumstances where the non-EEA partner has a firm offer of employment or self-employment in the UK, or where there is reasonable expectation that the non-EEA partner will gain employment or self-employment after entering the UK;
- The rules relating to income from cash savings and from self-employment should be reviewed;
- Third party support, particularly that provided by a close family member such as a parent, should be considered for inclusion in the rules.

5. The current evidential requirements in Appendix FM-SE should be reviewed, in order to ensure that they are clear and easy for applicants to understand.

6. The Home Office should ensure that full and regular data relating to applications made under the non-EEA partner and adult dependent relatives route is made available, in order to support scrutiny of the impacts of policy changes in this area. This should include adequate

disaggregation of family migration data within the International Passenger Survey and Home Office statistics to fully reflect different migrant inflows. The Home Office should make public, where possible, the reasons for refusal of applications by non-EEA partners and adult dependents. The current lack of reliable data on family migrants after their arrival here makes it difficult to study the short and long-term outcomes of family migration to the UK and this should be addressed.

Adult dependent relatives

7. Government should review the rules affecting adult dependents. Consideration should be given to amending the rules to ensure that:

- Where the UK sponsor can demonstrate their ability to provide full financial support to an adult dependent relative in the UK, or where the relative themselves has the means to financially support themselves, they are able to do so;
- An adult dependent relative can be eligible for sponsorship where they are in need of support from the UK sponsor, but before they become fully physically dependent.

APPENDIX A: Submissions to inquiry

Organisations and named individuals

Advice on Individual Rights in Europe Centre	IndoAmerican Refugee and Migrant Organisation
Andrew Griffiths MP	Dr Jenny Phillimore, University of Birmingham
BritCits	Cllr Jeremy Moulton, Southampton Council
British Medical Association	Joint Council for the Welfare of Immigrants
Dr Caroline Oliver, COMPAS, Oxford University	Latin American Women's Rights Service
Catholic Bishops Conference	Liberty
Churches Refugee Network	Migrants Rights Network
City of Bradford Metropolitan Council	Migrants Rights Scotland
City Life Education and Action for Refugees	Migrant Voice
COSLA	Migration Observatory
Duncan Hames MP	Migration Policy Group
Crosslinks	Mishcon de Reya
Professor Eleonore Kofman and Dr Helena Wray, Middlesex University	Northern Ireland Council for Ethnic Minorities
Fiona MacTaggart MP	Paul Blomfield MP
Fragomen LLP	Peter J Aspinall (Emeritus Reader), University of Kent
Girlington Advice and Training Centre, Bradford	PricewaterhouseCoopers LLP
Global Connections	Dr Robert Ford, University of Manchester
Gordon Banks MP	Royal College of Nursing
Hackney Migrant Centre	Salvation Army
Haddington Citizens Advice Bureau (paper submission only)	Sangat Centre, Keighley
Humber All Nations Alliance	Suffolk Refugee Support
Immigration Law Practitioners Association	Southampton Council of Sikhs
International Care Network	South Yorkshire Migration and Asylum Action Group
	Syzygy Missions Support Network

In addition, over 240 individual written submissions were received, of which over 175 were from families directly affected by the rules. The Home Office was unable to give written or oral evidence to this inquiry.

Participants in oral evidence sessions

Professor David Metcalf (Migration Advisory Committee)
 Barry O'Leary (Immigration Law Practitioners Association)
 Mahmud Quayum (Camden Community Law Centre)
 Jill Rutter (Daycare Trust, appeared in a personal capacity)
 Duncan Hames MP
 Anita Hurrell (Coram Children's Legal Centre)
 Dr Helena Wray (Middlesex University)
 Dr Vivienne Nathanson (British Medical Association)

London BME roundtable (convened by Migrants Rights Network and Race on the Agenda)

Barts Health, Centrepont, Migrants Resource Centre, Tamil Community Centre, The Arbour.

Scotland BME roundtable (convened by Migrants Rights Scotland)

Coalition for Racial Equality and Rights, Council of British Pakistanis (Scotland), Ethnic Minority Law Centre, Edinburgh & Lothians Regional Equality Council, Overseas Nurses and Careworkers Network, West of Scotland Regional Equality Council, Dundee International Women's Centre, Frae Fife, Migrants' Rights Scotland, Migrants Rights Network, Legal Services Agency, Hamilton Burns WS, Fife Arabic Society, CAB Haddington, Radiant & Brighter.

APPENDIX B: Key sources

Immigration Directorate Instructions, Family members under Appendix FM of the Immigration Rules, Annex FM Section FM 1.7. April 2013. Available online at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/chp8-annex/section-FM-1.7.pdf?view=Binary>

Immigration Directorate Instructions, Family Members under Appendix FM Of The Immigration Rules, Appendix FM Section FM 6.0. Effective from December 2012. Available online at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/chp8-annex/section-FM-6.0.pdf?view=Binary>

Appendix FM-SE, Family members - specified evidence. Available online at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/appendix-fmse/>

Home Office, 2011. Family migration: evidence and analysis (2nd edition). Home Office: London. Available online at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/115900/occ94.pdf

Independent Chief Inspector of Borders and Immigration, January 2013. An inspection of applications to enter, remain and settle in the UK on the basis of marriage and civil partnerships: April – October 2012 London. Available online at: <http://icinspector.independent.gov.uk/wp-content/uploads/2013/01/marriage-and-civil-partnerships-FINAL-PDF.pdf>

Available online at: <http://icinspector.independent.gov.uk/wp-content/uploads/2013/01/marriage-and-civil-partnerships-FINAL-PDF.pdf>

Migration Advisory Committee, 2011. Review of the minimum income requirement for sponsorship under the family migration route. London. Available online at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/family-migration-route/family-migration-route.pdf?view=Binary>

UK Border Agency, 2011. Family migration: a consultation. Home Office: London. Available online at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/family-migration/consultation.pdf?view=Binary>

UK Border Agency, 2012. Family Migration impact assessment. Home Office: London. Available online at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/news/fam-impact-state.pdf>

APPENDIX C: Data and charts

1. Family migration visa data, 2012

Information provided by Immigration Minister Mark Harper, 7 March 2013. Available online at: http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130307/text/130307w0003.htm#130307w0003.htm_wqn20

Immigration: Married People

Mr Gregory Campbell: To ask the Secretary of State for the Home Department how many applications to sponsor a non-EEA national spouse to settle in the UK have failed to meet the minimum financial income requirement introduced in July 2012. [146811]

Mr Harper: The latest published figures for 2012 on decisions, grants and refusals for entry clearance visa applications (from outside the UK) and for extensions of stay (from inside the UK) for non-EEA partners, potentially leading to settlement (indefinite leave), are given in the following tables: **Decisions on entry clearance visas from outside the UK, for non-EEA partners, providing a potential route to settlement (indefinite leave)**

Quarter	Category	Decisions	Issued	Percentage	Refused	Percentage	Withdrawn or lapsed
2012 Q1	Family route: Partner	9,946	8,021	81	1,886	19	39
2012 Q2	Family route: Partner	10,119	7,986	79	2,079	21	54
2012 Q3	Family route: Partner	10,970	7,636	70	3,260	30	74
2012 Q4	Family route: Partner	12,624	6,800	54	5,758	46	66

Decisions on extensions of stay from inside the UK, for non-EEA partners, providing a potential route to settlement (indefinite leave)

Quarter	Category	Decisions	Issued	Percentage	Refused	Percentage
2012 Q1	Spouse (probationary period applications)	4,598	4,130	90	468	10
2012 Q2	Spouse (probationary period applications)	3,303	3,011	91	292	9
2012 Q3	Spouse (probationary period applications)	2,769	2,418	87	351	13
2012 Q4	Spouse (probationary period applications)	4,534	3,731	82	803	18

Notes: 1. Includes unmarried and civil partners. 2. Excludes decisions on partners applying for immediate settlement. 3. Refusals may relate to applications made in earlier quarters, and may include decisions based on rules in place before July 2012. 4. Data are provisional. *Source:* Tables be.OLq and ex.01.q, Immigration Statistics October to December 2012.

2. Estimated impact of minimum income threshold on visa grants and applications per annum

UK Border Agency, 2012. Family Migration impact assessment. Home Office: London. Available online at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/news/fam-impact-state.pdf>

Family route numbers (rounded to '000)	Pre-policy: Grant annual volumes	Introduction of new minimum income threshold	Reduction in family route visa grants per annum	Associated reduction in applications
Family - visas	47,300 in 2012. 45,700 in 2013 onwards	-36% to -46% (-41%)	13,600 to 17,800 (15,700)	17,400 to 21,800 (19,500)

Source and Notes: Home Office Science calculations

3. Processing times for non-EU spouse marriage visa applications, Jan 2011 – Dec 2012

Information provided by Immigration Minister Mark Harper, 25 April 2013. Available online at: http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130425/text/130425w0013.htm#130425w0013.htm_wqn34

Entry Clearances: Married People

Ann McKechin: To ask the Secretary of State for the Home Department pursuant to the answer of 16 April 2013, *Official Report*, columns 305-6W, on entry clearances: married people, what the average processing time for initial decisions on marriage visas for non-EU spouses was in each despatch period between January 2011 and December 2012 where the application was made (a) within and (b) outside the UK. [152494]

Mr Harper: The information the hon. Member has requested is shown in the following table. For overseas visa applications, the visa section may despatch completed applications to the applicant or hold them for collection, dependent on the service chosen by the applicant. Consequently, the figures in Table 1 relate to the date the application was completed.

Overseas figures relate to non-EU spouse marriage applications only. However, in-country data cannot be disaggregated within cost, consequently this data relates to all in-country marriage applications. For in-country applications we have put additional resource into the processing of applications from spouses and partners of non-EU nationals, and waiting times have reduced. The average waiting time for applications processed last week was around nine weeks, and we are currently considering applications where the applicant enrolled their biometric information on 16 April 2013.

Table 1: Non-EU spouse marriage visa application processing times, January 2011 to December 2012 (Days)

Period	Processing times				
	Overseas	In-country			
		Postal		Premium	
		FLR(M)	SET(M)	FLR(M)	SET(M)
January to March 2011	37	185	66	8	9
April to June 2011	32	123	78	4	6
July to September 2011	34	71	79	5	5
October to December 2011	26	72	80	5	7
January to March 2012	28	204	90	6	6
April to June 2012	35	141	127	8	11
July to September 2012	53	254	128	21	8
October to December 2012	66	246	143	15	9

Notes: 1. All figures quoted have been derived from management information and are therefore provisional and subject to change. This information has not been quality assured under National Statistics protocols. 2. Overseas figures relate to main applicants and dependents. 3. Overseas figures relate to Non-EU spouse marriage visa applications completed between 1 January 2011 and 31 December 2012. 4. Overseas processing, time is based on the average External Customer Service working days. 5. Overseas data generated on 3 April 2013. 6. In-country figures relate to main applicants only. 7. In-country figures relate to in-country marriage applications despatched between 1 January 2011 and 31 December 2012. 8. FLR(M) applications relate to leave to remain. SET(M) applications relate to settlement. 9. Processing time is based on the average number of calendar days between application raised date and decision dispatch date. Figures relate to completed applications only. 10. In-country figures relate to postal applications as well as premium applications submitted at UKBA Public Enquiry Offices (PEO). 11. In-country data generated on 18 April 2013. 12. Overseas figures relate to non-EU spouse marriage applications only. However, in-country-data cannot be disaggregated within cost, consequently this data relates to all in-country marriage applications.

4. Nationality breakdown for visa grants for marriage and partnership, 2010

Data taken from Migration evidence and analysis (2nd edition) (2011), Home Office: London. Available online at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/115900/occ94.pdf

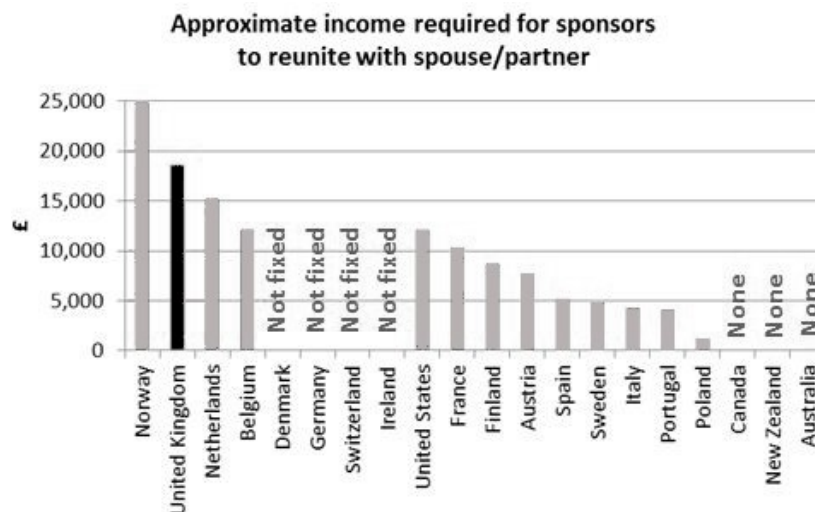
Nationality	Issued	Proportion of all applications
Pakistan	6,460	16%
India	3,940	10%
United States	2,490	6%
Nepal	2,050	5%
Bangladesh	1,670	4%
Thailand	1,605	4%
Philippines	1,385	3%
Turkey	1,260	3%
Nigeria	1,150	3%
South Africa	1,105	3%
Total	23,110	57%
Other countries	17,385	43%
Overall number	40,495	100%

Figures other than percentages are rounded to the nearest 5 and may not sum to the totals shown because of independent rounding. Percentages may not sum to the totals shown due to independent rounding.

5. Income requirement levels for key Western countries, as of July 2012

Chart produced by Migration Policy Group, July 2012.

Available online at: <http://www.mipex.eu/blog/cant-buy-me-love>



All-Party Parliamentary Group on Migration

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