

# *Written Evidence by The Children's Society*

## **Immigration and Social Security Co-ordination Bill 2020**

### **1. Introduction and Summary**

1.1 The Children's Society is a leading national charity committed to improving the lives of thousands of children and young people every year. We work across the country with some of the most disadvantaged children and young people through our specialist services. We place their voices at the centre of the work that we do.

1.2 Amongst the children and young people we support are children, young people and families who are subject to immigration control or whose access to services is restricted by immigration legislation. This includes children and young people who are seeking international protection, those who are victims of modern slavery, and others with an irregular, uncertain or unresolved immigration status. In 2019, we provided support to 1,496 children and young people who are refugees, asylum-seekers, or vulnerable migrants. Our services support children and young people from EEA backgrounds as well as those from non-EEA backgrounds. Evidence from these frontline services as well as from further research The Children's Society has conducted forms the basis of this evidence submission.

1.3 The present Bill brings an end to free movement and seeks to ensure that after the end of the transition period any EEA citizens in the UK and their family members are brought under the UK's immigration system. The Government has stated its aim is to simplify this system – a system which has proven unjust and unworkable for the most vulnerable – but as proposed, this Bill is a missed opportunity to address the system's most fundamental failings, failings whose impact have only been intensified and brought into the spotlight by the current COVID-19 pandemic.

1.4 Firstly, the Bill grants Ministers broad 'Henry VIII' powers to introduce wide-ranging changes to the immigration system without further primary legislation, while altogether failing to provide any consideration or assessment of the Bill's own impacts upon the thousands of children who will now be subject to this system. Children are clearly very vulnerable to the forthcoming changes. At present, children's application rate to the EU Settlement scheme is far lower than that of EEA adults, indicating that many may fall through the gaps<sup>1</sup>. Of particular concern to The Children's Society are the potential thousands of EU, EEA or Swiss national looked-after children and care leavers who will now become subject to the immigration system and as our research

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<sup>1</sup> The most recent EUSS quarterly statistics reveal that at 31 March 2020, 14% of applications to the Scheme were from children under 18; 85% from adults. Yet non-Irish EU citizen children are estimated to make up more than 20% of the non-Irish EU citizen population in the UK. See [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/884897/eu-settlement-scheme-statistics-quarterly-march-2020-hosb1220.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/884897/eu-settlement-scheme-statistics-quarterly-march-2020-hosb1220.pdf) and The Migration Observatory, 'Not Settled Yet? Understanding the EU Settlement Scheme Using the Available Data', p. 10, <https://migrationobservatory.ox.ac.uk/resources/reports/not-settled-yet-understanding-the-eu-settlement-scheme-using-the-available-data/>

has revealed, in many instances, undocumented through no fault of their own. Of further concern are the thousands of EU, EEA or Swiss national children and families who will become subject to the no recourse to public funds regime and join the hundreds of thousands of children and families already in the UK who have been pushed into destitution as a result of this condition placed on their immigration status.

## **2. Child Rights Impact Assessment and Best Interests Determination**

2.1 It is vital that in the development of new immigration law and policy that due regard is paid to the impact on children and that steps are taken to ensure children's rights will be protected. In November 2018, the Minister for Children reiterated the government commitment made in 2010 to 'give due consideration to the UNCRC articles when making new policy and legislation'<sup>2</sup>. A Child Rights Impact Assessment would serve this purpose.

2.2 A Child Rights Impact Assessment (CRIA) involves examining laws, policies, and changes to public services to determine their impact on children, and whether they comply with and indeed further the implementation of the UNCRC<sup>3</sup>. The impact assessment considers the direct or indirect impact of domestic legislative, policy or administrative decisions on either an individual child, specific groups of children, or children generally – often with a focus on the most vulnerable or marginalised. These impacts can be short, medium or long-term.

2.3 This present Bill will have an impact on the 900,000 EEA children currently living in the UK<sup>4</sup> as well as future EEA children coming to the UK. Despite this, a CRIA has never been undertaken for the Bill nor does the Bill contain any provision to suggest that child rights impact assessments will be made of new immigration rules or regulations created by the powers it grants.

2.4 The Home Office in determining immigration policy through the Immigration Rules has the power to unilaterally change immigration rules with little to no scrutiny, input from civil society, assessment of impact on children's and other vulnerable people's rights or parliamentary approval. The Bill, through the extremely broad 'Henry VIII' powers provided by Clause 4, will now grant Ministers additional means by which to create immigration policy that negatively impacts on children and young people who are subject to immigration control without appropriate checks and balances.

2.5 Added to these concerns is the lack of a comprehensive system for best interests determination, ensuring that decisions or policy which impinge upon children always expressly and fully consider children's best interests first.

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<sup>2</sup> Written statement to the House on 6 December 2010, by Sarah Teather, then Minister of State, Department of Education

<sup>3</sup> [https://downloads.unicef.org.uk/wp-content/uploads/2017/09/Unicef-UK-Briefing\\_Child-Rights-Impact-Assessment\\_England\\_September-2017.pdf?\\_ga=2.231235804.2146293039.1550061260-1923999841.1548158992](https://downloads.unicef.org.uk/wp-content/uploads/2017/09/Unicef-UK-Briefing_Child-Rights-Impact-Assessment_England_September-2017.pdf?_ga=2.231235804.2146293039.1550061260-1923999841.1548158992)

<sup>4</sup> The Migration Observatory have estimated that there are currently 1.2 million EU parents and 900,000 EU children of non-Irish EU parents residing in the UK. [https://migrationobservatory.ox.ac.uk/wp-content/uploads/2018/04/Report-Unsettled\\_Status\\_3.pdf](https://migrationobservatory.ox.ac.uk/wp-content/uploads/2018/04/Report-Unsettled_Status_3.pdf)

2.6 The UN Convention on the Rights of the Child 1989 (UNCRC), states that *‘in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration’* (Article 3). The Home Secretary has a duty under Section 55 of the Borders, Citizenship and Immigration Act 2009 to safeguard and promote the welfare of children with respect to its immigration, asylum and enforcement functions. The Supreme Court has held that, through Section 55, “the spirit, if not the precise language”<sup>5</sup> of the best interests principle has been translated into our national law.

2.7 Before decisions are made in all matters relating to children, across family courts, immigration decisions, and accommodation decisions for looked after children, there needs to be a determination as to whether that decision is in the best interests of the child. This should take into account the child’s views, identity, their safety and protection, health and education and the preservation of their family environment, among other factors.<sup>6</sup>

2.8 Yet, in its latest observations on the UK in 2016, the UN Committee on the Rights of the Child expressed regret ‘that the rights of the child to have his or her best interests taken as a primary consideration is still not reflected in all legislative and policy matters’. It called on the government to ‘ensure that this right is appropriately integrated and...applied in all legislative, administrative and judicial proceedings and decisions as well as in all policies, programmes and projects that are relevant to and have an impact on children’.<sup>7</sup>

2.9 We are aware Home Office processes, focused on immediate welfare, still lack a fundamental, comprehensive best interests determination process<sup>8</sup>. We call upon the Government to introduce a formal comprehensive system for such determinations for all children, including European citizens, to make sure that immigration decisions always expressly and fully consider children’s best interests first.

2.10 A CRIA, done properly, of this Bill and future immigration regulations, as well as a comprehensive process for best interests determinations, would show where the pinch points within the EU settlement scheme are or where a future immigration system could leave children and young people particularly vulnerable. It would allow targeted improvements to be made to avoid children becoming undocumented or destitute.

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<sup>5</sup> *ZH (Tanzania) v Secretary of State for the Home Department* – Lady Hale at Para 23

<sup>6</sup> See UN Committee on the Rights of the Child General Comment , General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), at <https://www.refworld.org/docid/51a84b5e4.html>

<sup>7</sup> <http://www.crae.org.uk/publications-resources/un-crc-committees-concluding-observations-2016/>

<sup>8</sup> Our past research highlighted that where children were separated from their parents and had no-one with legal parental responsibility looking out for them, children’s best interests particularly their long-term interests and life chances are not systematically and comprehensively assessed within immigration decision-making. See The Children’s Society, *Not Just a Temporary Fix: Durable solutions for separated migrant children*, 2015.

- *Recommendation 1: Before any changes to the United Kingdom immigration system are made, the Home Office must perform a rigorous Child's Rights Impact Assessment.*
- *Recommendation 2: The Government should introduce a comprehensive system of Best Interests Determination for all children to ensure immigration decisions always expressly and fully consider children's best interests first.*

### **3. EU Settlement Scheme and Children**

3.1 This Bill will end European free movement, with European nationals currently resident in the UK becoming subject to the UK's general immigration system at the end of the transition period. The EU Settlement Scheme (EUSS) was designed to provide EU, EEA and Swiss nationals with a digital immigration status should they wish to remain in the UK after this date. The scheme thus far has seen 3,147,000 concluded applications<sup>9</sup> – 415,140 from children under 18<sup>10</sup> – reflecting the relatively straightforward process for applicants (and for applicants under 18, their parents) with a long tax or benefit history in the UK.

3.2 Yet the rate of application for EU national children does not parallel their percentage of the current non-Irish EU national population in the UK. The most recent EUSS quarterly statistics reveal that at 31 March 2020, 14% of applications to the Scheme were from children under 18 – 85% from adults. Yet non-Irish EU citizen children are estimated to make up more than 20% of the non-Irish EU citizen population in the UK<sup>11</sup>.

3.3 These calculations, it is important to note, are based on estimates. The Migration Observatory estimates that there are as many as 751,000 non-Irish EEA/Swiss children in the UK<sup>12</sup>. Yet, there are an estimated further 239,000 UK-born children living with parents who are either both EU nationals or a mixed EU and non-EU national couple, and whose parents have reported them as UK citizens<sup>13</sup>. Tens of thousands of this cohort may not be British as their parents report and may in fact need to apply to the EUSS, their parents wrongly believing their children are British in having been born in the UK.

3.4 Issues which face everyone in applying to the EUSS are exacerbated for children, such as knowing whether they need to apply, locating documentation and proof of residency or finding adequate support where required. To make a successful

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<sup>9</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/884897/eu-settlement-scheme-statistics-quarterly-march-2020-hosb1220.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/884897/eu-settlement-scheme-statistics-quarterly-march-2020-hosb1220.pdf)

<sup>10</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/884897/eu-settlement-scheme-statistics-quarterly-march-2020-hosb1220.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/884897/eu-settlement-scheme-statistics-quarterly-march-2020-hosb1220.pdf)

<sup>11</sup> See [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/884897/eu-settlement-scheme-statistics-quarterly-march-2020-hosb1220.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/884897/eu-settlement-scheme-statistics-quarterly-march-2020-hosb1220.pdf) and The Migration Observatory, 'Not Settled Yet? Understanding the EU Settlement Scheme Using the Available Data', p. 10, <https://migrationobservatory.ox.ac.uk/resources/reports/not-settled-yet-understanding-the-eu-settlement-scheme-using-the-available-data/>

<sup>12</sup> *Ibid.*

<sup>13</sup> The Migration Observatory, Unsettled Status? Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit? p.9 [https://migrationobservatory.ox.ac.uk/wp-content/uploads/2018/04/Report-Unsettled\\_Status\\_3.pdf](https://migrationobservatory.ox.ac.uk/wp-content/uploads/2018/04/Report-Unsettled_Status_3.pdf)

application, children will need to supply proof of identity and nationality, such as a passport, and they will need to provide documentary evidence of how long they have been continuously resident in the UK. Many children may not have access to these sorts of documents, nor functioning relationships with family and relatives who may hold them. It is not enough to assume all children can simply rely on their parents to make an application on their behalf. In addition to looked after children and care leavers, children in prison or mental health institutions, children in informal fostering arrangements, children outside formal education system, children from the Roma community and many others will face substantial difficulties in making successful applications to the scheme. They will be relying on carers, local authorities and others to secure their status, often requiring specialist legal advice and facing significant challenges in providing documentation.

3.5 The hurdles these children face will only have been heightened by the current Covid-19 pandemic. During this time, support services and application routes for the scheme have been temporarily closed due to Covid restrictions. Home Office Statistics show applications fell by 46% in April<sup>14</sup>.

3.6 For this host of reasons, it is clear that it is very unlikely 100% of those who must apply to the EUSS will have done so by the deadline. The consequences of not doing so are tremendous. If even a small proportion of the more than 900,000 children above do not obtain settled status or secure citizenship, thousands of children will have become undocumented after the EUSS deadline and by virtue of this Bill.

3.7 We would therefore recommend the Government extend the deadline for applying to the EU Settlement Scheme and not penalise anyone for not having applied in time, least of all children.

- *Recommendation 3: The Government should extend the deadline for applying to the EU Settlement Scheme and not penalise anyone for failing to have applied in time, least of all children.*

## **4. EU/EEA and Swiss Looked after Children and Care Leavers**

4.1 In terms of children applying to the EU Settlement Scheme, of particular concern are the EU/EEA and Swiss national looked after children and care leavers in the UK<sup>15</sup>.

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<sup>14</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/887808/statistics-relating-to-covid-19-and-the-immigration-system-may-2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/887808/statistics-relating-to-covid-19-and-the-immigration-system-may-2020.pdf), p.7.

<sup>15</sup> <https://www.childrensociety.org.uk/what-we-do/resources-and-publications/eu-settlement-scheme-and-looked-after-children-and-care> - See this briefing for a full analysis on EUSS and Looked After Children and Care Leavers

4.2 The Home Office has estimated that there are 5,000 looked after children and 4,000 care leavers in the UK who would need to apply to the EU Settlement Scheme<sup>16</sup>. The exact number is unknown. While the Home Office has indicated that it has conducted its own survey to better understand the numbers of looked after children who would need to apply to the scheme, it has never published nor provided this data.

4.3 In order to develop a clearer understanding of the rate of application to the EUSS from European children in the care system or who had recently left care, The Children's Society conducted its own research, sending Freedom of Information requests to every local authority or children's services provider in the UK. This totalled 211 providers. Of the 153 who responded and were able to answer the FOI by January 2020, they identified just 3,612 EU/EEA or Swiss looked after children and care leavers – 40% of Home Office estimates.

4.4 Of these 3,612 children and young people, only 730 had thus far applied to the EUSS and of these, only 404 were in receipt of status through the EUSS (282 settled and 122 pre-settled). Meaning, of those identified by local authorities, only 20% have applied and only 11% have been granted status. This data, while not fully representative, offers a very strong indication that there are serious and urgent concerns around identifying and settling the migration status of vulnerable children whose status and future will be significantly impacted by the present Bill.

4.5 The government have produced non-statutory guidance to local authorities on the EUSS regarding their roles and responsibilities in making or supporting applications for looked after children and care leavers. However through our conversations with local authorities, we have found many are still unaware of the existence of this guidance or their responsibilities set out within it. It is therefore clear that the Government need to do much more work with local government to raise awareness and provide additional resources. The Children's Society has also worked to fill this gap by providing councillors with a resource<sup>17</sup> aimed at helping them in their accountability, overview and scrutiny roles.

4.6 Nonetheless even when local authorities are aware of their responsibilities, the young people in their care often have extremely complex cases which require considerable support and legal advice. Many, for example, require nationality advice, others have complex family arrangements, and most simply do not have the required documentation. Social workers are consequently spending months navigating advice and acquiring the necessary documents from European embassies<sup>18</sup>. These challenges are now further compounded by the coronavirus crisis. As local authority resources are being diverted elsewhere, identifying and assisting children in care to apply for an immigration status which is seemingly non-urgent has inevitably been de-

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<sup>16</sup> Immigration: EU Nationals: Written question – 222791 Answered on: 26 February 2019: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-questions-answers/?page=1&max=20&questiontype=AllQuestions&house=commons%2clords&uin=222791>

<sup>17</sup> <https://www.childrensociety.org.uk/what-we-do/resources-and-publications/looked-after-children-and-the-eu-settlement-scheme-a-guide-for>

<sup>18</sup> <https://gmiau.org/not-so-straightforward/>

prioritised. As previously cited, the most recent EUSS statistics evidence that applications had fallen by 46% in April 2020. We have already heard indications from practitioners that the number of applications and referrals of EU children in care or care leavers has been very low during this time.

4.7 Yet even when these young people have managed to apply, our research has found that only 404 identified EU national children in care or care leavers were in receipt of status through the EUSS. In just over a nine month period, only 11% of these vulnerable children and young people (4% of the Home Office estimate of 9,000) were able to settle their status compared with 79% of the overall official estimate of 3.4m non-Irish EU citizens over the same nine month period. If this application and receipt rate continues up until the EU Settlement Scheme deadline, thousands of European children and young people either currently in the care system or who have recently left care will fall through the gaps, becoming undocumented and left without immigration status.

4.8 The Home Office have previously stated that: “*Children who have do not apply because their parent or guardian did not submit an application on their behalf can submit a late application. This includes children in care and care leavers*”<sup>19</sup>. However there has been no further policy announcement that allows for this automatic guarantee or clarifies who precisely can or cannot apply past the deadline. As a result, losing their immigration status remains the legal default.

4.9 Both local and national government must work to ensure no child in the care of the state becomes undocumented. We hope this Bill can be amended to provide a guarantee that these children and young people will be given a permanent immigration status by their corporate parents.

- *Recommendation 4: The Home Office should provide automatic settled status to all EU/EEA/Swiss national looked after children and care leavers to ensure not one becomes undocumented.*

## **5. No Recourse to Public Funds Condition (NRPF)**

5.1 After the EUSS deadline, any Europeans in the UK who have become undocumented for failing to secure their status through the scheme will have ‘no recourse to public funds’. Likewise any new arrivals from Europe after the transition period, will like all new arrivals to the UK have ‘no recourse to public funds’ until the point that they are granted permanent status.

5.2 Having NRPF means that affected children and families are prevented from accessing most in-work and out-of-work benefits such as child benefit, tax credits, Universal Credit, income-related Employment and Support Allowance, income

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<sup>19</sup> Brandon Lewis in response to written Parliamentary Question: 22/01/2020 <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-questions-answers/?page=1&max=20&questiontype=AllQuestions&house=commons%2clords&uin=3314>

support, local welfare assistance schemes, housing benefit and social housing. Whilst limiting access to mainstream benefits and other ‘public funds’ has been a policy under successive governments, it does not mean it is the right one. As these policies seem set to be maintained through immigration rules without public consultation or parliamentary scrutiny, now is the time to again highlight our concerns.

5.3 The Children’s Society’s recently released *A Lifeline for All*<sup>20</sup>, a report which shines a spotlight on how the NRPF policy has a detrimental impact on children and young people, pushing thousands into abject poverty. We are concerned that, as a consequence of this present Bill and without a change in policy direction, thousands more children in the UK or arriving after the transition period will be plummeted into the same fate, unable to access the safety net due to the imposition of the NRPF condition.

5.4 While no centrally collected data is publicly available on how many individuals and families have NRPF attached to their immigration status, our research revealed that there are potentially hundreds of thousands of children and adults in the UK at present who will have no access to the welfare benefits lifeline, regardless of their needs or the poverty and deprivation they experience. Analysis of Home Office migrant journey data by the Migration Observatory reveals there were 142,496 children under 18 and 1,002,091 adults who had leave to remain the UK at 31st December 2016<sup>21</sup>. The vast majority<sup>22</sup> will have had the NRPF condition applied to their immigration status. These estimates do not include the numbers of children who are undocumented across the UK and thereby also have no access to public funds<sup>23</sup>. After the transition period, many more – now with European backgrounds – will be added to these figures<sup>24</sup>.

5.5 From our frontline services we know that many of the children currently impacted by NRPF live in families where parents’ income, simply by virtue of their profession, is not enough to meet their basic needs. Many of these hardworking parents hold what are now categorised as key roles, such as careworkers, NHS staff, cleaners and in food preparation. They work long hours – one father we interviewed worked 90-hour weeks – but without the ability to apply for top-up benefits or vital childcare support, they are unable to meet the needs of their children.

5.6 In other NRPF families, the need for access to welfare support will arise out of family breakdown, domestic violence, disability or as the present pandemic has made starkly clear, a sudden crisis. We know, from our services, that many of the families detrimentally impacted by NRPF are headed by single mothers, primarily from Black,

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<sup>20</sup> <https://www.childrenssociety.org.uk/what-we-do/resources-and-publications/a-lifeline-for-all>

<sup>21</sup> <https://migrationobservatory.ox.ac.uk/people-with-leave-to-remain-in-the-uk-by-gender-and-type-of-leave/>

<sup>22</sup> Per the Home Office’s Policy Equality Statement in 2015, 92% of the 11,046 applicants granted leave to remain under the 10-year family and private life routes from 1 January 2014 to 31 December 2014, were granted such leave with NRPF.

<sup>23</sup> <https://data.london.gov.uk/blog/how-many-undocumented-children-live-in-london/>

<sup>24</sup> The Migration Observatory have estimated that there are 1.2 million EU parents and 900,000 children of non-Irish parents residing in the UK. (See <https://migrationobservatory.ox.ac.uk/non-irish-eu-nationals-by-position-in-family-unit-2017/>; These figures relate to national data from 2017. Sumption, M., & Kone, Z. (2018). Unsettled Status? Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit?. Migration Observatory, COMPAS University of Oxford.)

Asian and ethnic minority backgrounds. Many of these families also have children with special educational needs who require additional help from supporting agencies.

5.7 Many of the children subject to NRPf will have been born and brought up here, many will in fact be British citizens, and yet they are excluded from accessing mainstream benefits because of their parents' immigration status. An audit of families affected by the NRPf condition supported by The Children's Society between 2015 and 2018 found that 68% had a child or multiple children born within the UK. These children have known no other home apart from the UK, but they are being denied access to vital support at times of crisis.

5.8 Some families, if identified as at risk of destitution, may be able to access support under Section 17 Children Act 1989. Data provided to us from the NRPf Network showed that 8,117 families with at least 16,331 dependents were supported by local authorities under Children Act provision between 2015 and 2019 in England and Scotland<sup>25</sup>. Many face 'gate-keeping' measures in trying to access such support. And even with support, hard pressed local authorities can only provide very limited support – sometimes as little as £3 per child per day – making it impossible to meet the needs of a child.

5.9 Families with no recourse to public funds are generally not eligible for free school meals, which are worth over £400 per child per year<sup>26</sup>. The announcement that children in families who are subject to the NRPf condition would be eligible to access Free School Meals through the voucher scheme during the Covid-19 pandemic was welcomed. However this extension of eligibility only applies to children in families with NRPf who are in receipt of local authority Section 17 assistance, meaning many families are still be ineligible for support. As restrictions begin to be lifted and children return to school, the Government should change eligibility to Free School Meals to ensure that children without recourse to public funds who are living in poverty are able and continue to access Free School Meals, regardless of their or their parents' immigration status.

5.10 As is evident, the real impact of the NRPf policy is that the life chances of thousands of children in the UK is being dictated by their parents' immigration status and this NRPf condition. It is a consequence recently highlighted by the High Court in *R(W) v SSHD*, which held that the current NRPf regime relating to persons on the 10-year route to settlement is unlawful in breaching Art. 3 of the ECHR against inhuman and degrading treatment<sup>27</sup>. The case was brought by an 8-year old boy whose mother was subject to NRPf under the 10-year route. She was a carer for mentally disabled persons and imposition of the NRPf condition led her and her son to experience periods of destitution. They moved house repeatedly, the boy moved school five times before age 8, and at one point, they became street homeless. The consequence of a

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<sup>25</sup> The NRPf Network Connect database provided data for families supported by 62 local authorities in England and Scotland, while Wales and Northern Ireland data is held separately.

<sup>26</sup> <https://www.gov.uk/government/news/free-school-lunch-for-every-child-in-infant-school>

<sup>27</sup> <http://www.landmarkchambers.co.uk/wp-content/uploads/2020/05/R-W-a-child-by-his-Litigation-Friend-J-v-SSHD-Judgment-1.pdf>

policy which makes person ineligible for almost all benefits, including those intended to maintain the basic welfare of a child, led the Court to hold the present NRPF regime, with respect to this 10-year route, unlawful and to set out that the Secretary of State bears an obligation either not to impose or to lift the NRPF condition when it is clear the applicant is at risk of imminently becoming destitute without recourse to public funds.

5.11 Some have raised that there is provision for families to apply to have their NRPF condition removed. Yet, even if approved, this change is not permanent. A family on the 10-year route must apply to have this condition lifted multiple times even where there has been no change in their circumstances<sup>28</sup>. And as is to be expected, this process is time consuming with the forms requiring expert immigration advice. Parents whom we support speak of the difficulties they have in collecting the evidence required to lift the NRPF condition. It has yet to be seen how the recent Court decision will impact decision making, but historically even when families do provide additional information and clear evidence that their children's welfare is at stake, NRPF conditions are often still applied. Those on the five-year route may also apply to have the NRPF condition lifted, but it results in their being placed on the ten-year route. If they are then able to meet the requirements and revert to the five-year route, the years spent in the UK do not count<sup>29</sup>.

5.12 For these reasons, we are concerned that children and families coming to the UK after 2021, will face the same hardship that we are acutely aware many are suffering now and add in significant numbers to the families already facing destitution as a result of NRPF. It has never been right to impose this condition, but as the Court's decision has recently underscored, it is certainly not right to continue imposing NRPF's harrowing impacts on to children.

- *Recommendation 5: The Government should repeal the no recourse to public funds condition and ensure that it is no longer applied to any new application for families with dependents under the age of 18.*

## **6. Immigration Fees and Health Surcharge**

6.1 There are estimated to be 900,000 children of non-Irish EU parents residing in the UK. Many will have been born in the UK and many will have a right to British citizenship. Some will have automatic rights because they were born in the UK to British or settled parents and could apply for a passport; others will have lived here for long enough to be eligible<sup>30</sup>.

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<sup>28</sup> As set out in Home Office Guidance, "*The fact that the applicant has, or has had recourse to public funds is not sufficient evidence that they are in need of that recourse to public funds at this application stage.*" Home Office. (2019). Family Policy: Family life (as a partner or parent), private life and exceptional circumstances - Version 5.0. London: UK Government Retrieved from <https://www.gov.uk/government/publications/family-life-as-a-partner-or-parent-private-life-and-exceptional-circumstance>

<sup>29</sup> Home Office website providing guidance on applications for change of conditions of leave to allow access to public funds if your circumstances change. Accessed 18th April 2020: <https://www.gov.uk/government/publications/application-for-change-of-conditions-of-leave-to-allow-access-to-public-funds-if-your-circumstances-change>

<sup>30</sup> Under the British Nationality Act 1981, a child is entitled to register as a British citizen if they are born in the UK and live here continuously for the first ten years of their life. A child who is born outside the UK becomes entitled to register as British if at least one parent becomes British or settled before the child turns 18. In addition, under Section 3(1) of the Act, there is also the right to register as a British citizen at the discretion of the Secretary of State, which disappears once the child has turned 18.

6.2 As this Bill now brings these children under the UK's immigration system, for many it will be in their best interest to apply for citizenship. Citizenship offers vital protections including freedom from immigration control, access to student finance and loans, employment, health services, other vital benefits and opportunities that allow a young person to thrive as they reach adulthood.

6.3 Yet many children are already, and many more now will be, prevented from applying for citizenship in large part due to the exorbitant fees - the current fee to apply for a child to register as a British citizen is £1,012<sup>31</sup>. Not being able to establish their citizenship damages young people's sense of identity, belonging and leads to social exclusion.

6.4 The prohibitive cost of citizenship is particularly stark for looked after children. Children in care are not exempt from the citizenship fee, which results in the fee being a cost-shift – using limited local authority resource to pay a Home Office application fee. It is a cost-shift which means that local authorities are de-incentivised to apply for citizenship for the children in their care. Bad practice is well-documented: for example, in 2016 a Local Government Ombudsman case found that one London Council failed to act appropriately and in a timely manner to help a care leaver regularise her immigration status after she became looked after, and was made to pay out £5,000 in damages<sup>32</sup>. Failing to secure a child's citizenship before adulthood can result in dire, life-long consequences for them.

6.5 Under Section 55 of the Borders, Citizenship and Immigration Act 2009, the Secretary of State has a duty to safeguard and promote the welfare of children in respect to all her functions including nationality. If the Government does not now, as it seeks to simplify the immigration system, take the opportunity to reduce this fee, it will not be adhering to its own principled laws to act in the best interests of the child. Rather, as hundreds of thousands more children become subject to the UK immigration system as a result of this Bill, the Government will be deterring greater numbers of children from claiming the UK citizenship and consequent rights they are in fact due and entitled to.

6.6 So too with the ever-increasing immigration application fees and Health Surcharge which migrants face as they seek leave to remain in the UK. After December 2020, EEA families entering the UK will also face these charges and the consequent NRPF condition. We know from our services that families already subject to the NRPF condition, on top of the destitution they face, are often forced to borrow from friends and family or take out loans to pay for the extortionate and ever-rising Home Office application fees and Immigration Health Surcharge. Parents we support express anxiety about how they are ever going to pay it back. Some have told us that they had lost friends and damaged links with family members as a result of not being

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<sup>31</sup> <https://www.gov.uk/government/publications/fees-for-citizenship-applications/fees-for-citizenship-applications-and-the-right-of-abode-from-6-april-2018>

<sup>32</sup> Royal Borough of Greenwich (13 019 106), available <https://www.lgo.org.uk/decisions/children-s-care-services/looked-after-children/13-019-106>

able to repay their debts, making it harder for them to survive without a safety net. Whilst a few have been supported to get the fees waived for Home Office applications, the high threshold that families need to meet to get a fee waiver, the significant evidential burden and the lack of legal advice to enable families to properly understand their options, makes this inaccessible for most families. This issue was considered as part of the Independent Chief Inspector's report on fees and charging<sup>33</sup>, however, the Home Office did not fully accept his recommendation, so families will continue to struggle and many will be forced into debt with, as we see through our services, significant consequences for their children.

- *Recommendation 6: We urge committee members to call on the Minister to waive citizenship fees to ensure that decisions about whether children secure settled status or citizenship are made in their best interests, not the ability of a family to pay.*
- *Recommendation 7: The Government should reduce immigration fees to cost price for children, young people and families to prevent more falling into debt or being left undocumented.*

June 2020

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<sup>33</sup> <https://www.gov.uk/government/news/inspection-report-published-an-inspection-of-the-policies-and-practices-of-the-home-offices-borders-immigration-and-citizenship-systems-relating-to>