



# Family Reunion Post Dublin III

## Refugee Legal Support (RLS)



16 June 2021



GARDEN COURT CHAMBERS



 @gardencourtlaw

# Welcome

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Photo by Belinda Fewings on Unsplash

- I. Introductions
- I. Overview of webinar
  - A. Current Family Reunion provisions inside the Rules following the end of Dublin III Regulations and potential arguments to make outside the Rules
  - B. The situation on the ground in Lesvos, Greece
  - C. The situation and conditions for asylum seekers in Athens and transition cases following the end of the Dublin III Regulation
  - D. Family Reunion from Europe project; the types of cases so far, fee waivers, capacity and challenges
  - E. Questions



# General housekeeping

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- For questions throughout the training, please use the chat function;
- We will all stay muted when we don't speak;
- There will be time for questions in the end of the webinar.



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# Dublin III Regulations

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- The Dublin Regulation allows families who are separated across different European countries to be reunited during their asylum claim.
- Article 8 permits the admission of an unaccompanied minor to EU Member State to join a family member, provided it is in their best interests to do so.
- Article 9 makes provision for an adult to join a spouse/partner or minor children if that person is a refugee or has HP.
- Article 10 makes provision for an adult to join an asylum seeking family member if part of a pre-existing family unit.
- Article 16 permits admission of a dependent person
- Article 17 contains discretionary clauses for the admission of applicants based on humanitarian grounds based in particular on family or cultural considerations



# Dublin III Regulation statistics

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- The Greek Asylum Service publishes full lists of Dublin requests to other European countries:
  - From 2013 through to February 2020, Greece sent out 28,712 Dublin requests to EU Member States.
- The UK received 3,102 of this total, roughly 11%. During the same period, 1836 people were transferred to the UK.
- UK Home Office statistics
  - In 2019, the UK received 1531 Take Charge Requests (TCRs) and 705 Take Back requests (TBRs). 1146 of these were from Greece (approx 74%).



# Current Family Reunion provisions inside the Rules following the end of Dublin III Regulation

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## Spouse/partner: Paragraph 352A and 352FA of the Immigration Rules Part 11



- (i) the applicant is the partner of a person who currently has refugee status/HP granted under the Rules in the UK; and
- (ii) the marriage or civil partnership did not take place after the person granted refugee status left the country of their former habitual residence in order to seek asylum or the partners have been living together in a relationship akin to marriage or a civil partnership which has subsisted for 2 years or more before the person granted refugee status left the country of their former habitual residence in order to seek asylum; and
- (iii) the relationship existed before the person granted refugee status left the country of their former habitual residence in order to seek asylum; and
- (iv) the applicant would not be excluded from protection by virtue of paragraph 334(iii) or (iv) of these Rules or Article 1F of the Refugee Convention if they were to seek asylum in their own right; and
- (v) each of the parties intends to live permanently with the other as their partner and the relationship is genuine and subsisting;
- (vi) the applicant and their partner must not be within the prohibited degree of relationship; and
- (vii) if seeking leave to enter, the applicants holds a valid UK entry clearance for entry in this capacity.



# Current Family Reunion provisions inside the Rules - children

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children

## Child under 18: Part 11 of the Immigration Rules, paras 352D and 352FG

- (i) is the child or a parent who currently has refugee status/HP granted under the Rules in the UK;
- (ii) is under the age of 18;
- (iii) is not leading an independent life, is unmarried and is not a civil partner and has not formed an independent family unit;
- (iv) was part of the family unit of the person granted asylum at the time that the person granted asylum left the country of their habitual residence in order to seek asylum;
- (v) the applicant would not be excluded from protection by virtue of paragraph 334(iii) or (iv) of these Rules or Article 1F of the Refugee Convention if they were to seek asylum in their own right;
- (vi) if seeking leave to enter, holds a valid UK entry clearance for entry in this capacity.





# Positives

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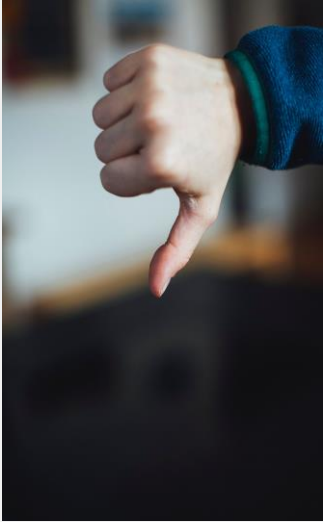
Photo by Johan Godínez on Unsplash

- So the Sponsor must be a refugee or have HP, but
- There is no requirement to show adequate maintenance and accommodation without recourse to public funds
- Refugee family members are exempt from the minimum income threshold of £18,600
- A refugee can be in receipt of welfare benefits but still sponsor his or her family members to come to the UK if the other requirements are met



# Negatives

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However, Part 11 of the Rules excludes:

- Asylum seekers
- Post Flight family members, including relationships formed with the Sponsor in a third country after the Sponsor fled his or her country of origin and arrived in the UK to seek asylum.
- Fiancé/e ;
- A dependent child over the age of 18 ;
- Other adult dependent relatives eg elderly parents, siblings, aunts and uncles etc ;
- Other child relatives eg siblings, nieces or nephews.



# Paragraph 319X of the Rules

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319X. The requirements to be met by a person seeking leave to enter or remain in the United Kingdom as the child of a relative with limited leave to remain as a refugee or beneficiary of humanitarian protection in the United Kingdom are that:

- (i) the applicant is seeking leave to enter or remain to join a relative with limited leave to enter or remain as a refugee or person with humanitarian protection; and
- (ii) the relative has limited leave in the United Kingdom as a refugee or beneficiary of humanitarian protection and there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care; and
- (iii) the relative is not the parent of the child who is seeking leave to enter or remain in the United Kingdom; and
- (iv) the applicant is under the age of 18; and
- (v) the applicant is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and



## Paragraph 319X of the Rules (continue)

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- (vi) the applicant can, and will, be accommodated adequately by the relative the child is seeking to join without recourse to public funds in accommodation which the relative in the United Kingdom owns or occupies exclusively; and
- (vii) the applicant can, and will, be maintained adequately by the relative in the United Kingdom without recourse to public funds; and
- (viii) if seeking leave to enter, the applicant holds a valid United Kingdom entry clearance for entry in this capacity or, if seeking leave to remain, holds valid leave to remain in this or another capacity.



# Applications outside the Rules

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- Asylum seekers

Unaccompanied minors who want to bring siblings or parent - no current provision for Sponsorship

- There is HO guidance which allows for applications to be granted in exceptional or compassionate circumstances, where the Rules are not met:  
*[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/684049/lotr-compelling-compassionate-grounds-v1.0ext.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684049/lotr-compelling-compassionate-grounds-v1.0ext.pdf)*
- It is difficult to gauge what is exceptional but human rights will need to be engaged and it is likely to be a high threshold and will need to be evidenced
- Look to the EU Family reunion directive and other Immigration Rules and policy guidance for assistance



# Applications outside the Rules

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Four key components:

1. Gather as much evidence of hardship as possible.
2. Emphasise closeness to an existing Part 8 or Part 11 Immigration Rule ie. point out all the aspects of the Rule that can be met
3. Set out the Article 8 argument in detail
4. Emphasise best interests, set out section 55 and associated guidance and jurisprudence



# Relevant Article 8 jurisprudence

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- KF (Syria) (entry clearance, relatives of refugees) Syria [2019] UKUT 413 (IAC)
- R v SSHD ex parte Razgar [2004] UKHL 27
- Zoumbas v SSHD [2013] UKHL 74
- AT [Article 8 - child refugee - family reunification] {2016} UKUT 227 (IAC)
- SD (British citizen children - entry clearance) Sri Lanka [2020] UKUT 00043 (IAC)



# Decision

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- Home Office suggest a decision will be made within 90 days made likely to be longer.
- If granted the Applicant will be given a visa valid for 90 days to enter the UK
- if refused the Applicant can seek to appeal on human rights grounds



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# The situation on the ground in Lesvos, Greece

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- RLS Lesvos
  - Five Years of the 2016 EU-Turkey statement
  - Turkey not a ‘Safe Third Country’
  - ‘Admissibility’
  - Geographical restrictions and the border procedure
  - New Greek ministerial announcement on Turkey as a ‘Safe Third Country’



Photo by Mika Baumeister on Unsplash



# The situation on the ground in Lesvos, Greece

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- Moria fire and plans for a new ‘controlled’ camp in Lesvos
  - Moria fire 8-10 September 2020



# The situation on the ground in Lesvos, Greece

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- ‘Temporary’ Mavrovouni RIC
- Closure of dignified accommodation (Karatepe & Pikpa)
- Plans for new ‘controlled’ camp on Lesvos
- Covid-19: discriminatory and insufficient public health measures
  - Conditions in the camp: A Covid-19 ‘tinder box’
  - Discriminatory public health restrictions
  - Lack of access to services



# The situation on the ground in Lesvos, Greece

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## Systematic pushbacks in the Aegean

- Proliferation of illegal pushbacks and collective expulsions since 2019
- Violations of international law, the ECHR and Greek domestic law



# The situation on the ground in Lesvos, Greece

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## Greece accused of 'shocking' illegal pushback against refugees at sea

Lawsuit filed at European court of human rights says group were abandoned in life rafts after some were beaten



▲ Refugees 'abandoned' in life rafts after alleged 'pushback' by Greek coastguard - video

### Culture of denial and impunity

“Despite the numerous allegations brought forward by international and non-governmental organizations and numerous calls for investigation of the alleged incidents, we regret that the Greek government has so far denied these practices and failed to take actions to end those abuses or to genuinely investigate this pattern, assume responsibility, and hold those responsible to account.”  
<https://www.hrw.org/news/2020/10/06/open-letter-members-hellenic-parliament-calling-investigation-border-abuses>



# The situation on the ground in Lesvos, Greece

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- Decrease in new arrivals - including those seeking family reunion.
  - Sea and land arrivals to Greece have decreased from 74,613 in 2019 to just 15,669 in 2020 – a year where evidence of systematic pushbacks from Greece to Turkey has continued to mount.
  - However, the general situation for asylum seekers and refugees in Greece remains dire.



# The situation on the ground in Lesvos, Greece

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- Dramatic decrease in new arrivals due to systematic pushbacks
- Rapid processing of asylum claims without adequate procedural safeguards after Moria fire
- Ineligibility of majority of family reunion claims to the UK post-Brexit
- Ongoing need for safe and legal routes not only to family reunion but also asylum in the UK



# The situation and conditions for asylum seekers in Athens and transition cases following the end of the Dublin III Regulation

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- Conditions in mainland Greece
  - Though fewer arrivals - extreme increase in asylum applications as 'Balkan route' closed
  - Greek Asylum Service overburdened and dysfunctional (offices moved December 2020, no phone lines/DublinNet)
  - Delays registering claims for asylum on mainland (Skype, lack of interpreters, bureaucratic hurdles)
  - No state legal aid for asylum claims at first instance, or for family reunification cases





# The situation and conditions for asylum seekers in Athens and transition cases following the end of the Dublin III Regulation

- Hostile environment
  - ND government's new laws - right to work, evictions and support terminated post-decision, cases closed/withdrawn
  - For adults, accommodation only if "vulnerable"
  - Cashcard - 150 Euros per adult per month to cover rent, food and all living needs - eligibility to narrow from next month
  - UASC - protective custody regime, lack of appropriate accommodation, ineligible for cashcard



# The situation and conditions for asylum seekers in Athens and transition cases following the end of the Dublin III Regulation

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- Covid-19
  - Partial closure of GAS offices
  - Weekly announcements
  - Identity documents expired - lack of clarity re renewal
  - Delays for Dublin transfers, inability to travel, cancelled flights



## The situation and conditions for asylum seekers in Athens and transition cases following the end of the Dublin III Regulation

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- Transitional cases, refused TCRs
  - Difficulty understanding and realising legal remedy (JR)
  - Lack of information
  - Need referral to UK rep and ideally help on the ground in Greece



## The situation and conditions for asylum seekers in Athens and transition cases following the end of the Dublin III Regulation

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- Transitional cases, accepted TCRs
  - Dublin transfer delays - as well as Covid-19 bureaucratic issues (travel agency contract)
  - No logic as to who is prioritised for transfer (UASC client waiting 10 months, adult clients transferred within 6 month deadline)
  - Advocacy and legal efforts to pressure HO but generally no legal remedy so far to these delays
  - Confusion amongst legal actors re 6 month deadline (no lapse of responsibility)
  - Prohibitive costs of necessary Covid-19 tests before transfer



Photo by Sangga Rima Roman Selia



## Family Reunion from Europe project; the types of cases so far, fee waivers, capacity and challenges

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- What is the FRFE project?
- What have we been seeing?
- Applicants:
  - registered and unregistered asylum seekers;
  - recognised refugees; and
  - undocumented people.
- Sponsors
  - For separated families;
  - For unaccompanied asylum-seeking children;
  - For adult children.



Photo by Katie Moun on  
Unsplash



# Challenges and difficulties of the FRFE project

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At the ECF stage:

- Evidencing financial support from UNHCR/housing;
- The implications of UNHCR support ending for those renting privately; and
- Signing CW/1 and CIV ECF 1 forms.

At the evidence gathering stage:

- Limited capacity of referral organisations;
- Difficulties obtaining social worker reports/best interests assessments;
- Lack of documents evidencing relationship for Bidoun families;
- Financial support from family members in the UK to UASCs in Greece.

Broader issues observed across Europe:

- Difficulty of obtaining medical evidence;
- Provision of incorrect legal advice; and
- Confusion regarding the dual proceedings.



# The impact of dual proceedings (asylum and FR)

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- Before the end of 2020 - family reunion under Dublin III - one procedure, same for all asylum seekers - much wider categories of sponsors
- Post Brexit: misinformation, panic, confusion, perilous journeys pick up
- Applicants in France withdrew their asylum applications due to the lack of legal advice - destitution, precarious living conditions
- Mother of four, asylum seeker in Athens wants to join her husband in the UK - can cost her up to £ 4,000
- Coordinating communication among parties is challenging - Lawyers and third parties in Greece, France etc → lack of knowledge, uninformed about new options



# Legal Issues

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- Legal Issues
- The UK government's statement on legal routes for protection claimants from the EU of 8 February
- New Plan for Immigration
- The Home Office claims that the Immigration Rules provide the same possibilities for family reunion



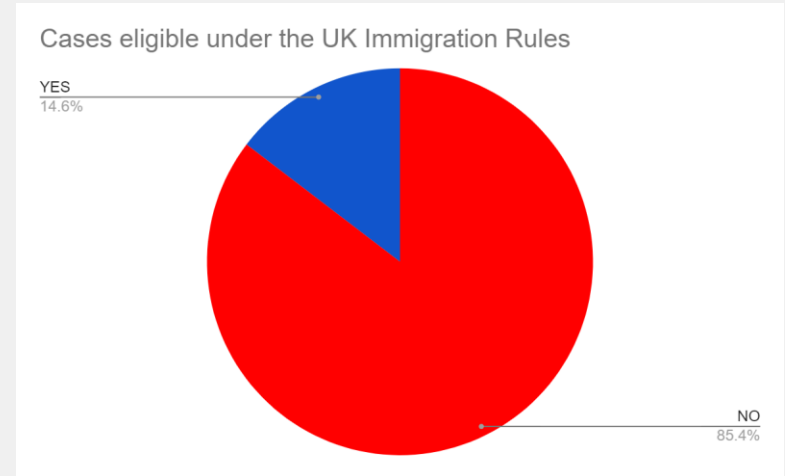
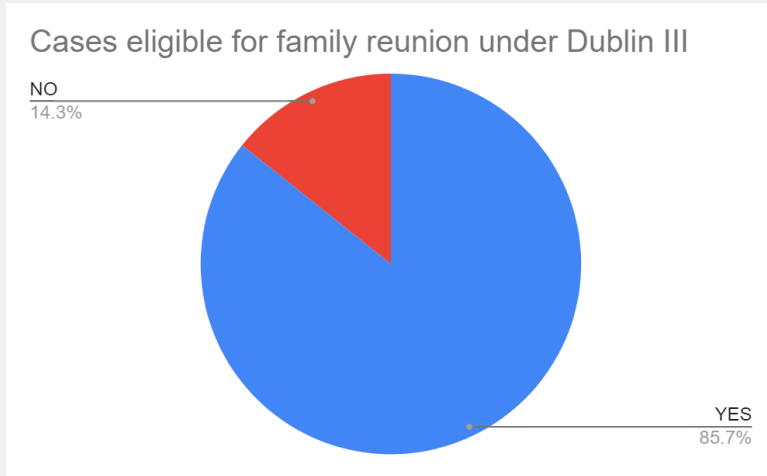
**our statistics say the complete opposite....**





# FRFE Statistics

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- **85.7%** of our clients would be eligible under Dublin III
- **Only 14.6%** of our clients are eligible under the UK Immigration rules primarily because of the status of the sponsor - asylum seeker

# Further complications

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- Fee waiver applications
  - Unaccompanied minors joining non-parent family members
  - Current lack of guidance for out of country applications
    - In response to a Freedom of Information Request RLS submitted recently to the HO, *“applicants are entitled to apply for a discretionary fee waiver while the guidance is under review. The application will be considered if urgent. Any non urgent applications will be placed on hold pending the publication of the revised guidance.”*
- Asylum seeker status of sponsors moving forward
- Lack of clarity, delay, re-traumatisation and the strain of continuing legal proceedings.



# QUESTIONS

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# Feel free to get in touch with us!

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And visit our website [www.refugeelegalsupport.org](http://www.refugeelegalsupport.org)



# Thank you

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