

Skype families

The effects on children of being separated from a mum or dad because of recent Immigration Rules

The British have a long history of overseas travel. Many see encouraging teenagers to experience different cultures during a 'gap year' as a valuable part of education and development, many enjoy annual or more regular holidays abroad, and some travel for work or study. For some of the millions who travel overseas, their time in another country takes on a wholly different meaning – they fall in love with the person they choose to share their life with. As with all couples many will have children and start a family. Many of these will settle abroad with their partner and children, making new lives and raising their family overseas and some will wish to return to the UK. Over the last three years, difficulties have arisen for a significant number of British citizens who have chosen to return to the UK with their family. For many new Immigration Rules have created unexpected barriers that have meant separation and anxiety for them and their children. Three years on from the introduction of these changes, research commissioned by the Children's Commissioner for England has highlighted the impact on the children involved. This discussion paper and the recommendations as how the Rules should be reformed to become more family friendly are based on that research.

New income requirements introduced in 2012 mean that a parent in the UK has to earn significantly more than the minimum wage for an overseas partner to be allowed to join them. Families also describe a system which is slow, rigid and cumbersome – presenting immense practical hurdles to application and acceptance.

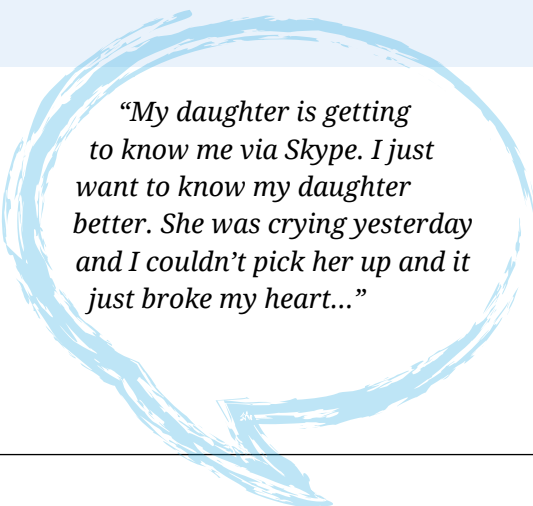
Families may wish to move back to the UK for a range of reasons – a desire to be nearer to elderly parents; a more positive environment in which to raise children; or a change in employment. The Children's Commissioner asked independent researchers to talk to families who had chosen to do just this but who are separated – the mother or father from overseas has not been allowed to join their husband or wife and children in the UK because they do not meet the required level of income. Many families have been, and remain, shocked and frustrated by these unexpected limitations. They face months or years of coping with separation as their children grow up and are effectively forced by law into raising children stranded from either a mum or dad and relying on the telephone and Skype as a way of keeping in touch.

This paper describes the impact on children who are growing up within 'Skype families' because their UK parent does not earn enough to enable the family to be united in the UK. It makes recommendations for change to family migration requirements to enable children to grow up with both parents in the UK.

Key Facts:

- **The numbers of families affected:** the IPS estimates that approximately 45,000 non-EU family migrants came to the UK in 2013. Since 2012 it is estimated that 15,000 children have been separated from one of their parents because their British parent could not meet the financial requirements of the Immigration Rules implemented in 2012.
- **The level of income required:** the Immigration Rules that came into effect in 2012 stipulate that sponsor partners are required to earn a minimum of £18,600 per annum, with limits on how this threshold can be met. This threshold rises to £22,400 to sponsor a child, with an additional £2,400 for each additional child. Almost half the UK adult population and many families with children do not earn this.

- **The impact on children:** families taking part in our research, who all lived in the UK and the vast majority of whom are British citizens reported that their children suffer distress and anxiety because of separation from a parent. Many believe this has a profound effect on their well-being and development. It is also often compounded by stress, anxiety and the practical difficulties faced by some single-parent families.
- **Consideration of the best interests of the child:** there is limited evidence that the best interests of the child are considered when cases are assessed.
- **Protecting all children in the UK:** the Rules and guidance do not comply with the duty to safeguard and protect the best interests of all children in the UK.
- **Separated families are not able to be self-reliant:** evidence from those surveyed suggests that the financial requirements often increase reliance on the UK welfare state because they experience similar financial pressures to those of single-parent families. Reducing reliance on the welfare state and fiscal benefits is a key aim of the recommendations.



"My daughter is getting to know me via Skype. I just want to know my daughter better. She was crying yesterday and I couldn't pick her up and it just broke my heart..."

The new financial requirements of families returning to the UK

The 2012 Immigration Rules changed the requirements for British citizens and settled persons (who have indefinite leave to remain in the UK) who wish to sponsor a non-European Economic Areas (EEA) partner to live in the UK. One of the most wide-reaching changes to the Rules was the introduction of a minimum income threshold of £18,600 per annum. Where a child is not a British citizen or is not settled, an additional £3,800 per annum must be earned for the first child and £2,400 pa for each subsequent child.

The family migration Rules are part of a wider programme to reduce net migration. The 2012 rule aimed to reduce the burden on taxpayers, promote integration and prevent and tackle abuse of the family migration route.

The people who have been affected by these Rules are British citizens and settled residents who have chosen to form long term relationships with non-EEA nationals. This is usually a result of travel, study or work abroad.

British citizens who have chosen to live in countries abroad where salaries are lower than the UK before returning can be particularly affected by the financial requirements finding it harder than those who have worked in the UK to meet them.

Children suffering from emotional and behavioural problems during separation

This research estimates that at least 15,000 children have been negatively affected by financial requirements in the three years following implementation of the new Rules.

They are living separated from a parent with reported stress, anxiety and difficulties for the children and their families. It is likely that this number will continue to rise if the policy remains unchanged.

Children and families surveyed reported a number of emotional and behavioural problems for children who were living with parents who were separated inside and outside the UK. Many parents reported that their children had become clingy and dependent on one parent; children often suffered from separation anxiety and became socially withdrawn, and some described children having difficulty socialising and experiencing problems at school.

Parents described how children displayed eating and sleeping problems; slow or poor language development, and can display anger and violence toward peers and family.

Some children said that they feel guilty and blame themselves for the absence of a parent.

Over the last three years, a significant number of families who met whilst living abroad have been prevented from living together in the UK. Some have been separated, with the sponsor staying in or returning to the UK in order to try to satisfy income requirements. Others have been prevented from returning to the UK as a family. This has resulted in many children being separated from a parent and siblings. Evidence from families reveals many negative short and long term impacts on children which are unintended consequences of a wider ambition to reduce net migration.

Research undertaken for the Children's Commissioner assessed the impact of the family migration financial requirements on children, young people and families through a survey of 100 families and interviews with children and their parents. The research did not evaluate other aspects of the Immigration Rules, such as the English language requirement or suitability criteria.

The overarching aim of the research was to help ensure that children's best interests are given primary consideration in the family migration system which usually means children living with both parents in the UK wherever possible.

Living life as a Skype family

"He struggles, completely, he really struggles, it's horrible. He has got anxiety...he gets knots in his tummy and he worries, yeah. We had him at the doctor a few times about stomach ache and the doctor said it was anxiety. Just not knowing, no stability, not knowing what's happening... And seeing a child crying all the time... because they are anxious, that's horrendous. He is 7, he should never feel that way, he should be a child, and they are taking that away."

Mother, son aged 7 years

"They feel awkward describing the situation to their new friends and go very quiet when it's talked about. My son is very introverted and opens up to his dad more than to me, so at the moment he can only open up on Skype, which isn't conducive to real bonding or empathy."

Mother, son and daughter aged 10 years and 6 years

"[My son] went from a bubbly little boy to very reserved in the first few months of the separation, he was angry at us both but couldn't understand why Dad won't want to live with him. He would go from angry kicking out to long periods of cry and thought Dad didn't love him. They are still working at rebuilding their relationship and trust."

Mother, son aged 6 years

"I recently had to go to his school because he went through a period of anger which partly... understand he's coming up to teenage years, but... he had a few anger issues and [talked] about wanting to smash things and not really hurting himself but wanting to break and smash stuff. He did also mention not wanting to live anymore and he did go through a period of "why am I even bothering anymore?" The doctor talked about the situation and asked him why he thought he was having those feelings and he said to her, "it's because of my dad, because I can't see my dad". The doctor says we need to give him the tools to cope with his feelings as she knows we can't fix it."

Mother, 11 year old son

"My husband and I are separating in part because we can't take the stress anymore. I have an elderly mother in England who needs me to be there. My children will hopefully see daddy once a month now if he continues living in Ireland, if he returns to America it will likely be once a year."

Mother, two sons aged 4 years and 4 months

How financial requirements act as a barrier to families being together

Families report that both the level and inflexibility of financial requirements for families are prohibitive.

With an income threshold which is set at 138% of the minimum wage there can be little surprise that it is not being met by a large section of the population wishing to return to the UK. Families who are returning to the UK are unlikely to be returning to established high income jobs in the first instance and many would wish to prioritise taking a job in the right location (often near to family members) and with the right flexibility (often allowing the work life balance needed to settle children into their new environments). A substantial number of families wishing to return to the UK are unfairly disadvantaged from the outset against their higher earning peers. There is also no account for regional differences.

"There is no way anyone with two children can earn that amount. I mean, even when I was working 42 hours a week, I didn't earn that amount. [There are] not that many people [who] earn that amount really unless you are really high up in whatever you do. I worked in a law court and I never earned that much money."

British mother, two daughters aged 18 months and 6 months living in the North East of England

Families also told us that the financial requirements are too inflexible – they only taking into account the sponsor's income at the time of application and do not look at the future trajectory of the family, or at other sources of support that may be available. Rules on savings were felt to be unduly onerous - threshold levels for savings are particularly high and there is a requirement for them to be held in instant access accounts.

If the family has been living overseas, the minimum income must have been earned by the British citizen in the country of origin and the sponsor must also have an established business or a suitable job offer in the UK.

In addition, evidential requirements are highly demanding - applicants and sponsors must produce a vast amount of evidence to an exacting standard. Applications are also expensive. The researchers calculated that the cost for a single applicant to move from application to settlement is likely to exceed £6,000. This increases if there are additional applicants such as non-citizen children.

Applicants who cannot meet the financial requirements for entry to join their partner, are often then refused visitor visas.

"It's so stressful, and worries are on your mind all the time, 'what is going to happen', because you don't how long these cases take to come to court. There is no guideline you just... you are just subject to this legal process which you are not an expert on and you are just relying on other people...decisions that can either wreck a family's life or improve it. We just don't know what is going to happen. It is that unknown that is so frightening."

Mother, son aged 4 years

The introduction of the new system has aimed to reduce reliance on welfare benefits by families containing a migrant partner and to encouraging the integration of migrant partners. The research concludes that reliance on welfare is not reduced and sometimes families are forced to rely on benefits because they are single parents. There is no evidence to suggest that integration has been enhanced but there is evidence that it has been reduced.

"If my husband could join me in the UK I would be out of housing benefit and council tax benefit, working tax credit. I wouldn't be eligible anymore. If anything, we would be putting more in because I could get more hours in and maybe take a second job. At the moment I can't leave my son alone that much, he's only 12 I don't want him to have to be without us both. If my husband was here we could share childcare."

Mother, son aged 12 years

Our legal obligations to children

UK Governments are under a legal obligation to treat the best interests of children as a primary consideration when implementing Rules and policies and when making individual decisions. The obligation originates in the Convention on the Rights of the Child (CRC) of which Article 3, which contains the best interests principle, is an overriding obligation. This has been put on a statutory footing by s.55 of the Borders, Citizenship and Immigration Act 2009, (UK Border Act) and also forms part of the Governments obligations under Article 8, the right to respect for private and family life of the European Convention on Human Rights (ECHR). The s.55 duty applies to all children in the UK irrespective of immigration status and should be applied to children who are abroad but who are impacted by an immigration decision to refuse them or their parent leave to enter the UK.

Following the best interests of children

Family migration and guidance must consider the best interests of the child. The financial requirements themselves must be compliant. An exception has been drafted within the Rules, paragraph EX.1, to ensure that all British children and children who have been continuously in the UK for seven years are protected and not removed unless it reasonable to do so. Finally, exceptional circumstances or compassionate factors can be taken into account and leave to enter or remain can be granted under Article 8 ECHR outside the Rules.

The 100 families surveyed by the researchers had a child separated from a parent because they did not meet the financial requirements. However, many applicants said that they could be financially independent without meeting rigid and high financial requirements. Furthermore, if the price of the public policy is interference with childrens rights that impact on their emotional and mental well-being, sense of stability and security, and ultimately happiness and development, then the interference is disproportionate and is not in their best interests.

EX.1 has been added to the Rules to try to mitigate the negative impact upon children of the financial requirements and is said to safeguard the rights of children in the UK. It is the only provision in the Rules that is drafted specifically to comply with the s.55 duty. However, it is limited:

- it only applies to children who have lived in the UK continuously for seven years preventing anyone younger from qualifying
- it only applies to children in the UK whose parent has not come to the UK on a visitor's visa. But applicants without any lawful immigration status qualify for the protection of EX.1. There are many circumstances which are discussed in the report where a British citizen child's parent is in the UK on a visitor's visa
- EX.1 does not apply when applicants apply from abroad for entry clearance, as required by immigration rules, even though they have British citizen children in the UK

- EX.1, whilst part of the immigration rules, is an exception, so if a person gets leave under it they do not get a five-year route to settlement. Instead they will get limited leave over a ten period. This doubles the length of time for settlement, prolongs uncertainty and increases the cost of the visa application process.

Exceptional and Compassionate Circumstances Outside the Rules are to be considered by decision-makers if an applicant does not meet the requirements of the Rules (including EX.1) in order to comply with Article 8 ECHR and the best interests principle. However, examples of exceptionality are very limited and narrow:

- they are premised on the basis that it is not in the child's best interest to live with both parents if one parent is abroad
- entry clearance officers are actively encouraged to explore 'other means of meeting the child's best interests – than by the applicant's presence in the UK'
- the vital significance of the parent child bond is reduced to 'effective and material contribution'.

Guidance informs how decision-makers interpret the law and amplifies the limitations of the rules. The consideration of the best interest of the child is seen as exception indicating that these cases are very rare. Guidance could be significantly improved. There are significant shortcomings and contradictions within the guidance itself, a lack of understanding by decision makers of the legal principles articulated within the guidance and a lack of application of any of the guidance in decision making.

Are children's best interests being considered?

In 2013, after the implementation of the new Immigration Rules, John Vine, the former Independent Chief Inspector of Borders and Immigration, reported that out of 60 cases involving children, in only one had a decision-maker considered their best interests. The refusal decisions analysed for this research suggest that this trend has continued showing a lack of detailed consideration of the child's best interests:

- in eight out of eleven cases the existence of the children was ignored
- in three it was a formulaic consideration with very little substantive analysis
- decision letters did not demonstrate any consideration of 'the information and evidence provided concerning the children's best interests' as specifically required by guidance
- in all except one case, where refusal was challenged by way of an appeal, the applicant won. When judges carried out an assessment balancing the importance of family life and children's best interests against public policy considerations, they held the government's interference in the child's life was disproportionate.

Supporting loving families to flourish

The Government rightly has a history of supporting family-friendly policies.

The family migration Rules work to keep loving families apart, they result in psychological and behavioural problems for the children affected by family separation and make it hard for all but a few high income earners to go into full time paid employment.

"I can only work part-time, as I need to be able to do school runs at the beginning and end of each day. I don't feel able to use childcare as my children's lives have been through enough upheaval already with the move and their Dad. So I am on a low wage and claiming benefits. I wouldn't need to claim benefits if my husband was here – we could both work, one of us full-time, and earn plenty to live off."

Mother, two children aged 6 years and 9 years

"It is simply not tenable to suggest that children, a six year old and a two year old could possibly maintain a parental relationship with a father or mother for that matter simply by the odd visit or by modern means of communication such as Skype, emails or telephone calls."

Contact such as this is wholly inconsistent in any normal family situation with the principles of Section 1 of the Children's Act 1989 applying the Welfare Checklist. Such a lack of contact with a natural father, in the absence of any other reason harmful to the children, is wholly inconsistent with their emotional well-being. Whilst this is not the determinant factor, it is a primary factor to consider the effect of the continued separation on the Appellant and the impact it has on his children."

**Immigration Tribunal Judge Peter Herbert
OBE Feb 2014**

"They said they want to make sure that the foreign partner would integrate in the British society. As far as I am concerned, if my wife has got British children and a British husband, she already is integrated in the British society ... You cannot say to someone who is so deeply integrated into British society that she has got children, you cannot say to that person, do not come in here. She is already integrated. Already."

Father, daughter aged 3 years and son aged 4 weeks

The research

The empirical evidence of the effects of the financial requirements on children and their families was gathered from 100 questionnaires submitted to the Office of the Children's Commissioner between September 2014 and July 2015, and 20 semi-structured interviews undertaken with affected families. These included interviews with 11 children between the ages of three and twelve years and with 27 parents.

A detailed review of literature relating to the financial requirements was carried out, including Government consultation and impact assessment documents, Migration Advisory Committee (MAC) reports, and evidence submitted to the All Party Parliamentary Group on Migration (APPG).

There was a detailed consideration of the UK's national and international legal obligations pertaining to children and an analysis of 11 decision letters, refusing the grant of leave to remain or enter the UK as a partner, to see if decision making reflects the legal obligations towards children.

The assessments were made with regard to children's rights under the United Nations Convention on the Rights of the Child.

Recommendations

Research shows the UK's family migration Rules are among the most family-unfriendly of any of the developed countries.

The inflexibility of the financial requirements recently introduced are one of the major contributory factors to this situation.

New financial requirements introduced in 2012 have been responsible for the separation of thousands of British children from a parent. This may arise because the child lives in the UK with the British sponsor parent and the non-EEA parent cannot enter or remain in the UK due to the sponsor's inability to meet the financial requirements of the Rules. In other cases, the child remains abroad with the non-EEA parent. Sometimes, the whole family is stranded abroad even though the sponsor or child may have a pressing need to return to the UK.

This research has identified several factors which make the financial requirements over-restrictive for families wishing to return to the UK:

- the income threshold is one of the highest in the world in relative terms and the second highest in absolute terms
- if applied today, the income threshold would not be met by almost half of adult British citizens, including many in full-time work, particularly the young, the retired, women, ethnic minorities and those living outside London and the South East where wages are lower. Families living in the north of England and Wales are particularly affected.
- the requirements are too inflexible, do not take account of the overall financial position of families or consider factors suggesting that they will be self-supporting after entry
- the requirements do not reduce reliance on public funds by migrant partners and are counter-productive as they increase reliance on public funds by the sponsor parent, and increase their and their children's disadvantage
- evidence suggests that decision-makers do not apply the principle of the 'best interests of the child as a primary consideration' in arriving at a decision
- applications are expensive for families and difficult to make.

Family life across borders raises concerns about effective immigration control but is an inevitable part of a modern, globalised world. It is not only an immigration question but engages the fundamental rights of British citizens and settled migrants, including significant numbers of British citizen children. It is particularly important that, where children are concerned, immigration restrictions are not more severe than they need to be.

The evidence collected shows that the current financial requirements go beyond what is needed to ensure that incoming migrant partners do not become a burden on the public purse and are able to participate in British society. In so doing, they are negatively affecting children in ways that are incompatible with the UK's obligations under the United Nations Convention of the Rights of the Child. (These obligations are reflected in s.55 of the Borders, Citizenship and Immigration Act 2009 and in s.6 of the Human Rights Act 1998, which incorporates Article 8 of the ECHR, and which put the best interests principle onto a statutory footing in domestic law).

The research highlights that the best interests principle was not given adequate consideration in the formulation of the current Rules, and that the principle is not given adequate priority in guidance provided to decision-makers or in the decision-making process. This has resulted in decisions being made that are harmful to children.

Changes are therefore proposed in the following six areas:

Changes to the financial requirements in the Immigration Rules

- The inclusion of the partner's potential earnings when calculating if the income threshold has been met (subject to reasonable evidential requirements)
- The inclusion of party support (including but not only free or low cost accommodation) when calculating if the income threshold has been met (subject to reasonable evidential requirements)
- Provision for regional variations to reflect different earning patterns throughout the UK
- Reduction of the £16,000 threshold before savings are counted and assets (including equity in property) to count without first being liquidated.
- The reduction of the income threshold to the equivalent of the minimum wage in the UK.

The position for families who have lived abroad and are returning to the UK is a particular concern. Consideration should therefore be given to ways to take account of the relative level of wages earned outside the UK and allow the family a reasonable period in which to live in the UK and find work without having to meet the financial requirements provided there is no recourse to public funds by the partner.

Make the 'best interests' of children a primary concern

Inclusion of a requirement to consider the 'best interests' entry or stay decisions of every child affected as a primary consideration within the Immigration Rules.

Ensure forms and processes reflect this

Amendment to forms and guidance to enable decision-makers to identify and assess a child's best interests in order to make them a primary consideration in decision-making.

Reductions in costs

Consider reductions to the cost of applications and application process to ensure they are not prohibitive.

Grant of visitor visas to parents of children living in the UK

Where an applicant either has a child in the UK or who is entitled to go to the UK, or their partner is shortly to give birth, a visitor visa should be granted in the absence of the most serious adverse factors provided the applicant shows that he or she can be maintained throughout the visit without recourse to public funds.

Data collection and publication

Data should be collected to record the age, nationality and residence of all children who are the applicant's and/or the sponsor's dependents this data should be collated, disaggregated to show which of these children have been affected by a refusal and published regularly.

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