House of Commons

European Scrutiny Committee

EU Asylum Reform

Twelfth Report of Session 2016–17

Documents considered by the Committee on 14 September 2016, including the following recommendations for debate:

Revision of EU rules on who qualifies for international protection

Establishing a common EU asylum procedure

Revision of EU rules on reception conditions for asylum seekers

Establishing an EU framework for the resettlement of individuals in need of international protection

Report, together with formal minutes

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Notes

Numbering of documents

Three separate numbering systems are used in this Report for European Union documents:

Numbers in brackets are the Committee's own reference numbers.

Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.

Numbers preceded by the letters COM or SEC or JOIN are Commission reference numbers.

Where only a Committee number is given, this usually indicates that no official text is available and the Government has submitted an "unnumbered Explanatory Memorandum" discussing what is likely to be included in the document or covering an unofficial text.

Abbreviations used in the headnotes and footnotes

AFSJ	Area of Freedom Security and Justice
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
ECA	European Court of Auditors
ECB	European Central Bank
EEAS	European External Action Service
EM	Explanatory Memorandum (submitted by the Government to the Committee)*
EP	European Parliament
EU	Treaty on European Union
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
SEM	Supplementary Explanatory Memorandum
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Euros

Where figures in euros have been converted to pounds sterling, this is normally at the market rate for the last working day of the previous month.

Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is published in the House of Commons Vote Bundle each Monday, and is also available on the parliamentary website. Documents awaiting consideration by the Committee are listed in "Remaining Business": www.parliament.uk/escom. The website also contains the Committee's Reports.

*Explanatory Memoranda (EMs) and letters issued by the Ministers can be downloaded from the Cabinet Office website: http://europeanmemoranda.cabinetoffice.gov.uk/.

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Introduction: Reform of the Common European Asylum System

By the end of 2015, the number of individuals forcibly displaced from their homes exceeded 60 million, the largest number ever recorded by the UN Refugee Agency. In the same year more than a million people—a quarter of them children—risked their lives crossing the Mediterranean to Europe and more than 1.2 million asylum applications were made in EU Member States, mainly in Germany and Sweden.[1] The Commission expects migration to be "one of the defining issues for Europe" for decades to come, with the EU remaining both a place of refuge for individuals fleeing war or persecution and a beacon for those seeking a better life.

The common European asylum system—a work in progress since 2003—provides a framework for managing the refugee crisis but many regard it as broken, or seriously weakened as a result of unilateral action taken by Member States to protect their borders, restrict access to their territories and make it more difficult to obtain protection. The Commission believes that there is too much fragmentation and too little mutual trust in Member States' asylum systems and that this has created "pull factors" which draw individuals to Member States with higher asylum recognition rates and better reception conditions. It has put forward a package of reforms which is intended to reduce the scope for differential treatment, depending on where an application for international protection is made, deter "asylum shopping" and secondary movements between Member States, and establish effective burden-sharing and solidarity mechanisms to ease the pressure on frontline Member States.

The UK participates in some, but not all, of the EU's asylum laws. All the Commission's asylum reform proposals are subject to the UK's justice and home affairs opt-in, meaning that the UK is under no obligation to participate—it will only be bound if the Government decides to opt in. Full Parliamentary scrutiny of the Government's opt-in decisions is important. There can be little doubt that a decision to opt into all of the Commission's asylum reform proposals would have a substantial impact on the UK's asylum system. Whilst such an opt-in may seem unlikely, given the UK's patchwork participation in current EU asylum measures, the legal, practical and political feasibility of opting into some of the proposals but not others is far from clear. It is also unclear whether the UK could continue to take part in existing EU asylum measures, such as the Dublin III Regulation which allocates responsibility for examining applications for international protection made within the EU, if it does not opt into the new replacement measure.

Even if the Government were to recommend that the UK should not opt into any elements of the asylum reform package, the Commission's attempt to establish "an integrated, sustainable and holistic migration policy, based on solidarity and fair sharing of responsibilities, which can function effectively in times of calm and crisis" is likely to have an impact on the UK's own asylum system, both in the period while the UK remains a member of the European Union and after it has left. As the situation in Calais demonstrates, the asylum policies and systems in place in other Member States have an important bearing on the flow of asylum seekers and irregular migrants seeking to enter the UK.

1 See UNHCR's Global Trends report for 2015.

The Commission presented its first set of asylum reforms in May. Those proposals sought to streamline the existing Dublin procedures and include a new "fairness mechanism" designed to ensure a more equitable distribution of asylum seekers amongst Member States. They would also transform the European Asylum Support Office into the EU Agency for Asylum, giving it a stronger mandate to monitor the overall functioning of the common European asylum system, and develop the EU's asylum database (Eurodac) into a broader migration management tool.[2]

We have recommended that the Government's opt-in decisions should be debated together on the floor of the House and that the debate should take place within the three month period available to the Government to decide whether or not opt in. The Government has yet to schedule a debate and will now be unable to do so before the first opt-in deadline expires on 3 October.

This Report concerns the second (and final) set of asylum reform proposals published in July. The proposals set out changes to substantive EU asylum laws determining who qualifies for international protection, the procedures applicable to asylum claims and how asylum seekers are to be treated while their claims are being examined. They also include a new EU resettlement framework which is intended to reduce the flow of irregular migrants to the EU and ease the pressure on frontline Member States by providing safe and legal pathways to the EU for individuals in need of international protection. We recommend that there should be a similar opt-in debate on these proposals.

Each of our Report chapters identifies questions which we consider to be relevant to the opt-in debates. An overarching concern is whether the reforms proposed achieve the Commission's objectives of establishing "a more humane, fair and efficient European asylum policy" and ensuring that the EU "takes on its fair share of the global responsibility to provide a safe haven for the world's refugees".[3] We also look further ahead, inviting the Government to consider the impact that harmonised EU rules on asylum would have on the UK once the UK has left the EU.

The final chapter of our Report includes a submission by the International Rescue Committee on the proposed EU Resettlement Framework.

2 See our earlier Reports on the first set of EU asylum reform proposals: Sixth Report HC 71-iv (2016–17), chapter 1 and chapter 2 (15 June 2016) and Seventh Report HC 71-v (2016–17), chapter 1 (6 July 2016).

3 See our Thirty-third Report HC 342-xxxii (2015–16), chapter 3 (11 May 2016) on the Commission Communication, Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe.

Measures recommended for debate and the opt-in deadline

Measure	Opt-in deadline	Date of debate recommendation
Reform of the Dublin rules: Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection	1 November 2016	15 June 2016
Reform of the Eurodac database: Regulation on the establishment of "Eurodac" for the comparison of fingerprints	1 November 2016	15 June 2016
Reform of the European Asylum Support Office: Regulation on the European Union Agency for Asylum	3 October 2016	6 July 2016
Reform of EU rules on who qualifies for international protection: Regulation on standards for determining who qualifies for international protection, a uniform status for refugees or individuals eligible for subsidiary protection, and the content of the protection granted	1 December 2016	14 September 2016
Reform of EU asylum procedures: Regulation establishing a common procedure for international protection in the European Union	8 December 2016	14 September 2016
Reform of EU rules on reception conditions: Directive laying down standards for the reception of applicants for international protection	8 December 2016	14 September 2016
Establishing an EU resettlement framework: Regulation establishing a Union resettlement framework	4 December 2016	14 September 2016

1 Revision of EU rules on who qualifies for international protection

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; opt-in decision recommended for debate on the floor of the House before the expiry of the UK's three month opt-in deadline on 1 December 2016; drawn to the attention of the Home Affairs Committee
Document details	Proposal for a Regulation on standards for determining who qualifies for international protection, a uniform status for refugees or individuals eligible for subsidiary protection, and the content of the protection granted
Legal base	Articles 78(2)(a) and (b) and 79(2)(a) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Numbers	(37967), 11316/16 + ADD 1, COM(16) 466

Summary and Committee's conclusions

1.1 The migration and refugee crisis continues to dominate the EU's political agenda and has exposed weaknesses in the design and implementation of the common European asylum system—a body of EU laws which is intended to ensure that asylum standards and reception conditions are broadly comparable across the EU and that procedures for examining claims and deciding who qualifies for international protection will produce the same outcome.[4] These laws are underpinned by the Dublin system, a set of procedural rules supported by an asylum database (Eurodac) which allocate responsibility for each application for international protection made within the EU to a single Member State—usually the Member State through which an individual first entered the EU.

1.2 Despite this substantial body of EU law, the EU's asylum system remains fragmented. Differences persist in the procedures applied by Member States, the reception conditions provided to individuals while their applications for international protection are examined, the number and characteristics of those who qualify for protection and the rights available to those who are granted protection. The Commission considers that these differences are capable of creating "pull factors" which draw asylum seekers towards Member States with higher asylum recognition rates and reception standards. Secondary movements of irregular migrants within the EU reached "unprecedented levels" in 2015 as many of those entering the EU through Greece and Italy travelled onto more favoured destinations elsewhere in the EU.[5]

4 The term "asylum" and "international protection" are used interchangeably in this chapter. They encompass claims which result in the conferral of refugee status under the UN Refugee Convention and other forms of subsidiary protection which are not a direct result of individual persecution but where an individual would be at risk of "serious harm" (including from armed conflict) if returned to his or her country of origin.

5 See the Frontex Risk Analysis for 2016, chapter 5.14.

1.3 In a Communication on the reform of the common European asylum system published in April, the Commission sketched out its ideas for "an integrated, sustainable and holistic EU migration policy" which is "humane and efficient" and based on "a fair sharing of responsibilities".[6] It proposed a first phase of reforms in May which focuses on changes to the Dublin system and the transformation of the European Asylum Support Office into the European Union Agency for Asylum with stronger powers to monitor and improve the overall functioning of the common European asylum system.[7]

1.4 The Commission has recently published its second (and final) phase of reform proposals which set out changes to substantive EU asylum laws determining who qualifies for international protection, the procedures applicable to asylum claims and how asylum seekers are to be treated while their claims are being examined. The package also includes a proposal for a structured EU resettlement framework which is intended to reduce the flow of irregular migrants by providing safe and legal pathways to the EU for third country nationals who are in need of international protection. All of the proposals are subject to the UK's Title V (justice and home affairs) opt-in, meaning that the UK will only be bound by them if the Government decides to opt in.

1.5 Introducing the new proposals, the Commission's First Vice-President (Frans Timmermans) highlighted the need for an asylum system which is both "effective and protective". The Commissioner for Migration (Dimitris Avramopoulos) added that the objective of the reform proposals is to "have a common system which is quick, efficient and based on harmonised rules and mutual trust between Member States".[8] The Commission emphasises the interdependence of the measures it has proposed which are intended to ensure "full convergence between national asylum systems", reduce incentives for secondary movements within the EU, strengthen mutual trust between Member States, and function effectively "in times of calm and crisis".[9]

1.6 In this chapter, we consider the changes proposed to the 2011 EU Qualification Directive which sets out common standards for determining who qualifies for international protection and the rights conferred on beneficiaries of international protection.[10] The Commission believes that "applicants for international protection must have the same chance of obtaining the same form of protection, or having their claim rejected, irrespective of where they apply for asylum in the Union".[11] It anticipates that the changes it is proposing will produce greater convergence in asylum recognition rates across the EU by requiring Member States to apply fully harmonised criteria when examining an application for international protection and take into account country of origin information produced by the proposed EU Agency for Asylum. The proposal also harmonises the rights accorded to beneficiaries of international protection, requires more frequent "status reviews", and includes stricter rules to discourage secondary movements.[12]

1.7 The Immigration Minister (Mr Robert Goodwill) says that the Government is considering EU proposals which are subject to the UK's Title V opt-in "in light of the EU

6 See our Thirty-third Report HC 342-xxxii (2015–16), chapter 3 (11 May 2016).
7 See our Sixth Report HC 71-iv (2016–17), chapter 1 and chapter 2 (15 June 2016) and our Seventh Report HC 71-v (2016-17), chapter 1 (6 July 2016).
8 See the press release issued by the Commission on 13 July 2016.
9 See pp.2–3 of the Commission's explanatory memorandum accompanying the proposed Regulation.
10 See Directive 2011/95/EU.
11 See the Commission's fact sheet on its latest reform proposals.
12 See the Commission's infographic on the changes proposed.

referendum result" and will inform us of its approach "shortly". Meanwhile, he sets out the factors which the Government will take into account in deciding whether or not to opt into the proposed Regulation and the Government's position on "the main thematic areas" covered by the proposal. He recognises the importance of "consistent asylum processes that balance the rights of applicants with the ability of Member States' national authorities to determine asylum claims and tackle abuse" but suggests that the shift from a standard-setting Directive which allows Member States to "make accommodations when transposing the provisions to reflect their national law" to a directly applicable Regulation "has profound implications for national sovereignty".[13]

1.8 **The UK's patchwork participation in EU asylum measures complicates the task of analysing the impact of the proposed Regulation on asylum law and practice in the UK. If the Government decides to opt into the proposal, we expect the Minister to provide** a **full analysis of the changes that would be needed to bring UK law into line with common EU standards, as well as his assessment of their overall impact on international protection standards in the EU.**

1.9 **The Minister broadly supports the objectives underpinning the Commission's proposed reforms, notably discouraging "asylum shopping" and secondary movements between Member States, as well as securing greater consistency in recognition rates, and accepts that "there is some merit to the argument" that these objectives can be better achieved at EU level rather than by Member States acting alone. He adds, however, that "there is equally an argument" that Member States could achieve these objectives individually. In weighing the justification for EU action, we expect the Government to assess the strength of the arguments for and against. If, as the Minister appears to suggest, the Government's preference would be for the UK to set its own standards, we ask him to explain whether and how unilateral national action would achieve the objectives he supports by ensuring greater convergence in decision making across the EU or "bring[ing] practices in line across EU Member States".**[14]

1.10 **The Minister recognises the importance of delivering "consistent asylum processes" across the EU but expresses concern that the choice of a directly applicable Regulation, rather than a standard-setting Directive which has to be implemented in national law, raises "profound implications for national sovereignty". We ask him to clarify:**

- **whether his concern stems solely from the choice of legal instrument or from particular provisions contained in it which present a particular threat to national sovereignty; and**
- **how else, other than by means of a Regulation, it would be feasible for the Commission to secure reforms which do not replicate the fragmentation in national asylum systems resulting from the existing EU Directives.**

1.11 **The Commission emphasises the interdependence of the package of asylum reform proposals put forward in May and July, with each component forming "an indispensable part" of a comprehensive overhaul of the common European asylum system based on "common, harmonised rules that are both effective and protective"**

13 See para 20 of the Minister's Explanatory Memorandum.

14 See, for example, paras 23 and 24 of the Minister's Explanatory Memorandum.

and designed to ensure "full convergence" between national asylum systems within the framework of "a well-functioning Dublin system".[15] The scale of the reforms proposed is ambitious and it is essential to get it right. The package raises important questions about the EU's response to the refugee crisis and the demands placed on national asylum systems, as well as Member States' commitment to implementing humane, fair and effective asylum policies.

1.12 **We have previously recommended an opt-in debate on the first package of asylum reform proposals concerning the Dublin system, the Eurodac database and the proposed EU Agency for Asylum and made clear that it should take place before the expiry of the three month opt-in deadline—likely to be in early October. No debate has been scheduled so far, nor has the Government responded to our request for further information on the Government's handling of opt-in decisions arising before the UK's formal withdrawal from the EU.**

1.13 **Given that the length of the process for withdrawing from the EU is uncertain, we have no hesitation in recommending a further opt-in debate on the second package of asylum reform proposals. We suggest that the debate should consider the merits of the Commission's reform package, the legal, practical and political feasibility of opting into some, but not all, of the reform proposals, and the wider implications for the UK once it has left the EU. We would like to hear whether there are any elements of the reform package which the Government would wish to replicate in its own domestic asylum laws or practices and what impact differential asylum rules in the EU and the UK may be expected to have on the UK asylum system post-Brexit.**

1.14 **The proposed Regulation remains under scrutiny. As well as providing the information we have requested, we ask the Minister for an indication of the initial reactions of other Member States to the Commission's reform package and progress reports on any negotiations that take place before the opt-in debate. We draw this chapter to the attention of the Home Affairs Committee.**

Full details of the documents

Proposal for a Regulation on standards for the qualification of third country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third country nationals who are long-term residents: (37967), 11316/16 + ADD 1, COM (16) 466.

Background

UK participation in the common European asylum system

1.15 The UK maintains its own border controls and is not part of the Schengen free movement area. Under arrangements in force since 1999, the UK does not participate in

15 See p.3 of the Commission's explanatory memorandum accompanying the proposed Regulation.

(and is not bound by) EU visa, asylum and migration laws unless it decides, on a case-by-case basis, to opt into individual measures. The right to opt in is enshrined in Protocol No. 21 to the EU Treaties.

1.16 The common European asylum system has been phased in over a number of years. The UK participates fully in the measures covered by the Commission's first phase of reform proposals concerning the Dublin system (the Dublin III Regulation and the Eurodac Regulation) and the European Asylum Support Office. Although the UK also opted into the first raft of EU asylum laws adopted between 2003 and 2005, it did not opt into (and so is not bound by) further changes to EU asylum laws agreed between 2011 and 2013. These more far-reaching rules establish common standards for determining who qualifies for international protection and the rights conferred, the procedures for granting and withdrawing international protection, and reception conditions pending the examination of an asylum claim. It is these later EU asylum laws which the Commission's recent reform proposals seek to change.

The EU Qualification Directive

1.17 The 2011 EU Qualification Directive establishes two forms of international protection. The first—refugee status—is based on the definition of a refugee contained in the UN Refugee Convention.[16] Under the Convention, a refugee is a person who:

- is outside his or her country of nationality (or habitual residence if stateless);
- has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion; and
- is unable or unwilling to avail him or herself of the protection of that country, or to return there, for fear of persecution.

1.18 Under the Directive, refugee status can only be conferred on a third country (non-EU) national or stateless person. The Directive frames an act of persecution as one which is "sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights" and sets out a non-exhaustive list of "acts of persecution" which may qualify an individual for refugee status covering:

- acts of physical or mental violence, including acts of sexual violence;
- legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;
- prosecution or punishment which is disproportionate or discriminatory;
- denial of judicial redress resulting in a disproportionate or discriminatory punishment;

16 Article 1(A) of the 1951 Geneva Convention on the Status of Refugees, as amended by the 1967 New York Protocol.

- prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts amounting to a crime against peace, a war crime or a crime against humanity; and
- acts of a gender-specific or child-specific nature.[17]

1.19 The Directive also requires Member States to take account of certain elements linked to the concepts of race, religion, nationality and social group when assessing the reasons for persecution. For example, race includes colour, descent, or membership of a particular ethnic group; membership of a particular social group may include a group based on a common characteristic, such as sexual orientation.[18]

1.20 The Directive includes a second form of protection—subsidiary protection—which is intended to be "complementary and additional to" the protection conferred by the UN Refugee Convention.[19] It covers those who do not qualify as refugees but for whom there are substantial grounds for believing that they would face "a real risk of suffering serious harm" if they were returned to their country of origin or habitual residence. The Directive defines serious harm as any of the following:

- the death penalty or execution;
- torture or inhuman or degrading treatment or punishment in the country of origin; and
- a serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.[20]

1.21 Individuals granted refugee status or subsidiary protection are referred to collectively as beneficiaries of international protection but there are differences in the rights they enjoy under EU law. For example, refugees are entitled to a three-year renewable residence permit, compared with a one-year renewable residence permit for beneficiaries of subsidiary protection. In principle, all beneficiaries of international protection are entitled to "necessary social assistance", but this may be limited to "core benefits" for individuals granted subsidiary protection.

1.22 Although the UK does not participate in the 2011 EU Qualification Directive, the basis for qualifying as a refugee or as a beneficiary of subsidiary protection is largely the same as under the earlier (2004) Directive which still applies to the UK.[21]

1.23 The Commission's reform proposals draw on "tentative findings" of two external studies (yet to be published) assessing how the 2011 EU Qualification Directive has been implemented by Member States (particularly the use they have made of optional or discretionary provisions) and its practical application. The Commission has also consulted stakeholders. Whilst Member States "generally expressed support for further

17 See Article 9 of the 2011 Qualification Directive.
18 See Article 10 of the 2011 Qualification Directive.
19 See recitals (32) and (33) of the proposed Regulation.
20 See Article 15 of the 2011 Qualification Directive.
21 See Directive 2004/83/EC.

harmonisation", albeit to differing degrees, NGOs feared that this would lead to a lowering of standards and underlined the need to consider both the reasons for secondary movements within the EU and possible incentives to reduce their prevalence.[22]

The proposed Regulation

1.24 The Commission believes that the chances of obtaining international protection, and the specific form of protection granted, should not vary according to the Member State in which an application is made. It therefore proposes to repeal the 2011 Qualification Directive and replace it with a Regulation—as EU Regulations are directly applicable, there is less scope for rules to be implemented or applied differently by Member States. The proposed Regulation would not alter the definition of a refugee or an individual eligible for subsidiary protection (which has remained largely unchanged since 2004) but would seek instead to encourage greater convergence in recognition rates, protection status and associated rights by introducing more prescriptive, harmonised rules. The proposal also incorporates a number of Court of Justice rulings clarifying how provisions of the 2004 and 2011 Qualification Directives are to be interpreted and applied. In the following paragraphs, we summarise the main changes proposed by the Commission and their intended purpose.

Harmonising the criteria for granting protection

1.25 The purpose of the changes proposed by the Commission is to achieve greater convergence in determining who qualifies for international protection, reducing the incentives for secondary movements within the EU to secure a more favourable outcome. The proposed Regulation would not alter the criteria for granting protection, but it would cut back the areas in which Member States are able to diverge from common EU standards and reduce the discretion they currently enjoy to decide how to implement some of the provisions of the 2011 Qualification Directive. The most significant changes are:

- ***Harmonisation of the standards for granting refugee or subsidiary protection status***: Member States would no longer be able to offer more favourable treatment when deciding who qualifies for either status and the rights associated with both forms of protection. The proposed Regulation would not prevent Member States from offering other forms of humanitarian protection, provided they can be clearly distinguished from refugee status or subsidiary protection status.[23]

- ***Assessment of applications for international protection***: the 2011 Qualification Directive allows Member States to decide whether an applicant for international protection should be subject to a formal obligation to cooperate in the assessment process. The proposed Regulation would require applicants to substantiate their claim, to cooperate with the relevant authorities, and to remain "present and available" throughout the procedure.[24]

22 See pp.10–11 of the Commission's explanatory memorandum accompanying the proposed Regulation.
23 See Article 3 of the 2011 Qualification Directive and of the proposed Regulation.
24 See Article 4 of the 2011 Qualification Directive and of the proposed Regulation.

- ***International protection needs arising after leaving the country of origin:*** the 2011 Qualification Directive allows Member States to refuse refugee status if the risk of persecution is based on circumstances created by the applicant after leaving his or her country of origin. The proposed Regulation would extend the scope of this provision to subsidiary protection status as well as refugee status and stipulate that Member States "shall not normally" grant either form of protection.[25]

- ***Actors of persecution or serious harm:*** the 2011 Qualification Directive includes an illustrative list of actors of persecution or serious harm. The proposed Regulation would transform this into an exhaustive list, preventing Member States from considering other possible actors.[26]

- ***Actors of protection:*** the proposed Regulation similarly includes an exhaustive list of actors of protection and provides more prescriptive guidance on the circumstances in which Member States should consider there to be adequate protection against persecution or serious harm.[27]

- ***Internal protection:*** when assessing an application for international protection, the 2011 Qualification Directive envisages that Member States *may* consider whether adequate protection is available in part of the applicant's country of origin and may reject the application on these grounds. The proposed Regulation would *require* Member States to consider the availability of internal protection as part of the assessment process and to take into account its "accessibility, effectiveness and durability" as well as the personal circumstances of the applicant. Member States must also consider whether the form of internal protection envisaged would "impose undue hardship" before rejecting an application for international protection on these grounds.[28]

- ***Reasons for persecution:*** Article 10 of the proposed Regulation sets out the elements which Member States are required to take into account in determining whether an individual has a well-founded fear of persecution. It includes a new provision, based on case law of the Court of Justice, clarifying that an individual cannot reasonably be expected to "behave discreetly or abstain from certain practices where such behaviour and practices are inherent to his or her identity" in order to avoid the risk of persecution.[29]

- ***Exclusion from refugee status***: Article 12 of the proposed Regulation sets out the grounds on which an individual may be excluded from being a refugee. It includes new provisions clarifying the meaning of "a serious non-political crime" and "acts contrary to the purposes and principles of the United Nations" to reflect developments in the case law of the Court of Justice.[30]

25 See Article 5 of the 2011 Qualification Directive and of the proposed Regulation.
26 See Article 6 of the 2011 Qualification Directive and of the proposed Regulation.
27 See Article 7 of the 2011 Qualification Directive and of the proposed Regulation.
28 See Article 8 of the 2011 Qualification Directive and of the proposed Regulation.
29 See Joined Cases C-199/12 to C-201/12.
30 See Joined Cases C-57/09 and C-101-09.

Greater convergence in asylum recognition rates

1.26 The Commission highlights continuing disparities in asylum recognition rates and the type of protection granted by Member States. Between January and September 2015, Italy recognised nearly all asylum applications made by Afghan nationals, whereas Bulgaria recognised just under 6%. Syrian nationals are granted refugee status in some Member States and subsidiary protection in others.[31] To encourage greater convergence, the Commission proposes new provisions requiring Member States to base their assessments on (rather than simply take into account) country of origin information and guidance produced or coordinated by the EU Asylum Agency (the proposed successor to the European Asylum Support Office).[32]

Regular status reviews

1.27 The 2011 Qualification Directive does not include a requirement for regular status reviews. The Commission expresses concern that the absence of regular checks to verify whether there is a continuing need for protection creates "an additional incentive" to seek refuge in the EU rather than closer to home as the protection granted by Member States has "a *de facto* permanent nature".[33] The changes it proposes are intended to ensure that protection is granted "only for as long as the grounds of persecution or serious harm persist".[34] The proposed Regulation would require Member States to review refugee status and subsidiary protection status whenever the proposed EU Asylum Agency indicates that there is "a significant change in the country of origin" which might affect an individual's protection needs. A review of refugee status would also be required at the first renewal of a refugee's residence permit (after three years of residence) and the first and second renewal of a residence permit granted to a beneficiary of subsidiary protection (after the first and third year of residence).[35] If refugee or subsidiary protection status is withdrawn, the proposed Regulation includes a new three-month grace period in which the individual concerned may apply for residence on any other grounds provided for in EU or national law.[36]

Discouraging secondary movements

1.28 The EU External Borders Agency (Frontex) has reported unprecedented secondary movements within the EU in 2015 as many asylum seekers entering the EU through Greece or Italy moved elsewhere to secure more favourable treatment. These secondary movements can distort the allocation of responsibility envisaged under the Dublin rules. The Commission has already put forward a proposal to reform the Dublin system which includes a new "corrective allocation mechanism" to ensure a fairer distribution of asylum seekers amongst Member States. The Dublin reforms also include measures to discourage individuals moving (without authorisation) elsewhere in the EU once they have been granted international protection by the responsible Member State.

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31 See p.4 of the Commission's explanatory memorandum accompanying the proposed Regulation.

32 See Article 7(3) of the proposed Regulation on actors of protection, Article 8(3) on internal protection, Articles 11(2)(b) and 17(2)(b) setting out the circumstances in which an individual ceases to be eligible for refugee or subsidiary protection status and Articles 15 and 21 on the review of refugee and subsidiary protection status.

33 See p.4 of the Commission's explanatory memorandum accompanying the proposed Regulation.

34 See p.5 of the Commission's explanatory memorandum accompanying the proposed Regulation.

35 See Articles 15 and 21 of the proposed Regulation.

36 See Articles 14(5) and 20(5) of the proposed Regulation.

1.29 The proposed Regulation would mirror these reforms, stipulating that, as a general rule, beneficiaries of international protection only have the right to reside in the Member State which granted them protection.[37] To discourage secondary movements, the proposal also includes an amendment of a 2003 Directive setting out the conditions in which third country nationals may acquire long-term resident status in a Member State. The amended rules make clear that the requirement for five years of continuous legal residence can only be satisfied, in the case of beneficiaries of international protection, by remaining in the Member State which granted protection. Unauthorised secondary movements will reset the clock to zero when calculating the five-year period, lengthening the time it takes to acquire long-term resident status and the related right to live and work elsewhere in the EU.[38]

Further harmonisation of the rights of beneficiaries of international protection

1.30 The changes proposed by the Commission largely clarify the scope of existing rights and obligations and link the granting of certain benefits—access to employment and to social security—to the issuing of a residence permit.[39] The proposed Regulation includes more prescriptive rules on residence permits, harmonising their format and period of validity (for refugees, an initial period of three years renewable at three-yearly intervals; for beneficiaries of subsidiary protection, an initial period of one year renewable at two-yearly intervals).[40] Travel documents issued to beneficiaries of international protection are similarly harmonised to ensure that they comply with EU rules on security and biometric features.[41] The provisions on family unity are extended to immediate family members and (at the discretion of each Member State) other close relatives who lived together with the beneficiary of international protection before his or her arrival in the Member State granting protection, even if the family unit was formed outside the country of origin.[42]

1.31 The proposed Regulation sets out more clearly the employment rights to which beneficiaries of international protection are entitled (for example, equal treatment as regards working conditions, pay, dismissal, working hours, leave, and workplace health and safety) as well as the means available to secure formal recognition of their qualifications or validation of their skills.[43] It also stipulates that beneficiaries of international protection are to be treated in the same way as nationals of the Member State which has granted protection as regards social security[44] and social assistance.[45] Access to certain (unspecified) types of social assistance may (at the discretion of each Member State) be made conditional on participation in integration measures. Moreover, as is the case under the 2011 Qualification Directive, Member States may limit the social

37 See Article 29 of the proposed Regulation.
38 See Article 44 of the proposed Regulation.
39 See Article 22(3) of the proposed Regulation.
40 See Article 26 of the proposed Regulation.
41 See Article 27 of the proposed Regulation.
42 See Articles 2(9) and 25 of the proposed Regulation.
43 See Articles 30 and 32 of the proposed Regulation.
44 Article 2(17) of the proposed Regulation defines the scope of social security under EU law: sickness benefits, maternity and equivalent paternity benefits, invalidity benefits, old-age benefits, survivors' benefits, benefits for accidents at work and occupational diseases, death grants, unemployment benefits, pre-retirement benefits and family benefits.
45 Article 2(18) of the proposed Regulation defines social assistance as benefits granted "in addition to or beyond social security benefits [...] with the objective of ensuring that the basic needs of those who lack sufficient resources are met".

assistance granted to individuals with subsidiary protection status (but not those with refugee status) to "core benefits". The proposed Regulation does not define "core benefits". In its explanatory memorandum accompanying the proposal, the Commission says that they should be understood to cover "at least minimum income support, assistance in case of illness or pregnancy and parental assistance if these benefits exist and [are] granted to nationals".[46]

Integration measures

1.32 The proposed Regulation provides a clearer indication of the type of integration measures—language courses, civic orientation and integration programmes and vocational training—which must be available to beneficiaries of international protection. It allows (but does not require) Member States to make it compulsory to participate in these measures. In its accompanying explanatory memorandum, the Commission observes that Member States should take into account "individual hardship" in determining whether it is appropriate to require a beneficiary of international protection to take part in integration measures.[47]

Legal base and subsidiarity

1.33 The proposed Regulation is based on Article 78(2)(a) and (b) of the Treaty on the Functioning of the European Union (TFEU) which provides for the adoption of EU measures establishing a common European asylum system based on a uniform status for refugees and a uniform subsidiary protection status for other third country nationals in need of international protection. The proposal also cites Article 79(2)(a) TFEU as this is the equivalent legal base for the 2003 Directive on the status of third country nationals who are long-term residents which the proposed Regulation would amend.

1.34 The common European asylum system operates on the basis of common standards and procedures for all individuals who are seeking or have been granted international protection. Despite considerable approximation of nationals laws and practices, the Commission believes that disparities in recognition rates, the status granted and the rights conferred by different national asylum systems "incentivise 'asylum shopping' and secondary movements within the EU". According to the Commission, "action at EU level is needed to help facilitate more convergence in terms of asylum decisions within the EU and mitigate these consequences".[48]

The Minister's Explanatory Memorandum of 4 August 2016

1.35 The Minister explains that the UK opted into and remains bound by the first EU Qualification Directive, adopted in 2004, but did not opt into the 2011 Qualification Directive. This complicates the task of determining the extent of the changes proposed by the Commission:

> "Wherever the Commission explains that elements in the proposal are already part of the Qualification Directive 2011/95/EU and so do not

46 See p.17 of the Commission's explanatory memorandum accompanying the proposed Regulation.
47 See p.17 of the Commission's explanatory memorandum accompanying the proposed Regulation.
48 See p.7 of the Commission's explanatory memorandum accompanying the proposed Regulation.

> represent significant change, it might not necessarily be the case for the UK, as we did not opt in to this recast version and remain bound by the earlier version of Directive 2004/83/EC."[49]

1.36 The Minister does not attempt "an exhaustive discussion" of all aspects of the proposed Regulation but addresses the Commission's choice of legal instrument and the "main thematic areas" covered by the proposal.

The use of a Regulation instead of a Directive

1.37 The Minister notes that a Regulation would be directly applicable and, if adopted on the basis of the Commission's proposal, would require changes to domestic law. He suggests that moving from a standard-setting Directive to a Regulation that "by its nature restricts flexibility" would raise "profound implications for national sovereignty", adding:

> "We therefore anticipate that the negotiations in Council will be complex, as some Member States seek to maintain their sovereignty in this policy area. The Government has some concern about the inflexibility of a Regulation."[50]

International protection

1.38 The Minister supports the imposition of an explicit obligation on applicants for international protection to provide the information necessary to substantiate their claim and to comply with other requirements, including remaining in the Member State responsible for examining the application throughout the asylum procedure. He suggests that certain changes, such as the expectation that Member States should refuse refugee or subsidiarity protection status to individuals whose claim is based on circumstances they have created since leaving their country of origin (so-called "*sur place*" claims), are likely to be difficult to apply in practice. He continues:

> "The Geneva Convention is silent on the motivation that leads to *sur place* status but does require careful consideration of the potential risk on return. This principle of *'non-refoulement'* will not be altered by changes to the Directive/Regulation given the reference to '*without prejudice to the Geneva Convention and the European Convention on Human Rights*' (ECHR) in the text. In reality, although the benefits of refugee status may be denied, if the individual is ultimately at risk of persecution on return to their country of origin or former habitual residence, removal will not be possible."[51]

1.39 The Minister says that the obligation to assess whether adequate protection is available within part of the applicant's country of origin (so-called "internal protection") is reflected in the UK's current asylum policy, adding:

> "The Government supports this element of the proposal as it would ensure that Member States are considering claims equally across the EU. The internal protection element of considering a claim is set out clearly in UK guidance and is considered an important aspect of determining whether someone needs international protection or not. The Government believes

49 See para 21 of the Minister's Explanatory Memorandum.
50 See para 20 of the Minister's Explanatory Memorandum.
51 See para 22 of the Minister's Explanatory Memorandum.

> that more consistency with use of this argument could lead to greater consistency of recognition rates across the EU. For example, some Member States' grant rates for certain countries, such as Nigeria, are vastly different to that of the UK's and greater consistency would ensure fair treatment of individuals, reduce the risk of 'asylum shopping' and reduce pull factors of migration."[52]

1.40 The Minister notes that some of the changes proposed "mirror recent legal precedents". For example, in assessing whether an individual has a well-founded fear of being persecuted, the proposed Regulation would clarify that she or he cannot reasonably be expected to behave discreetly or abstain from certain practices where such behaviour or practices are inherent to his or her identity. He adds:

> "This position already exists in UK asylum policy and guidance following the Supreme Court Judgment in HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department [2010] UKSC 31. The Government agrees this is necessary in order to bring practices in line across EU Member States."[53]

1.41 The proposed Regulation would require Member States to base their assessment of an application for international protection (and subsequent reviews of the protection status once granted) on country of origin information and guidance produced by the EU Agency for Asylum (when established), as well as guidance and information issued by UNHCR. The Minister observes:

> "The Government notes the value of having common guidance on the situation in countries of origin, particularly for Member States who do not have access to such a service; however, the UK makes use of its own country and information guidance, supplemented by the European Asylum Support Office's (EASO) guidance where necessary. The Government will continue to have regard to country guidance produced by EASO and UNHCR to inform our view on UK country guidance, but any mandatory use of this guidance is inflexible and our position is that we will retain use of UK guidance within our domestic asylum system."[54]

Status reviews

1.42 The Commission considers that regular reviews to establish whether the reasons for granting an individual international protection still apply are necessary to ensure that international protection is not regarded as a permanent status, incentivising individuals to seek refuge in the EU rather than other countries closer to home. It says that the reviews should not create an "unnecessary burden" for Member States. The Minister welcomes the introduction of "an enhanced mechanism for reviewing status which mirrors existing UK policy and is consistent with the existing principle that there is no international obligation to grant protection to individuals indefinitely", but adds:

52 See para 23 of the Minister's Explanatory Memorandum.
53 See para 24 of the Minister's Explanatory Memorandum.
54 See paras 25–26 of the Minister's Explanatory Memorandum.

> "It is recognised however, that this brings an additional administrative burden for Member States to introduce a consistent review procedure. The Government introduced enhanced guidance in November 2015 to ensure that reviews of status were more robust and meaningful and to reinforce the principle that settlement in the UK is not an automatic right. Those who still need protection on review may benefit but those who no longer need protection are expected to return home in safety or apply to stay under other provisions of the Immigration Rules. It is noted that such a procedure is likely to have a significant impact on certain Member States, particularly those whose asylum system is less developed."[55]

Secondary movements within the EU

1.43 The Minister supports the Commission's efforts to ensure that individuals remain within the Member State which initially granted them protection and to disincentive unauthorised movement to another (second) Member State. He notes that the UK would not be affected by the proposed amendment of the 2003 Long Term Residents Directive as the UK does not participate in this Directive. If the UK were to opt into the proposed Regulation, this part of the proposal would therefore need to be amended to reflect the UK's position.

1.44 The Minister welcomes clarification that individuals granted international protection in one Member State may nevertheless apply to reside in another Member State if national law permits.

1.45 The proposed Regulation would authorise the Commission to decide, by means of an implementing act, the form and content of information to be provided to beneficiaries of international protection so that they have a clear understanding of their rights and obligations and the consequences of any unauthorised movement to a second Member State. The Minister "notes the challenges of securing EU-wide agreement to the content and form of information to be provided, but welcomes this as a means of ensuring migrants are aware of their obligations".[56]

Family unity

1.46 The Minister indicates that the proposed Regulation is in line with current UK policy "in terms of providing mechanisms for family reunification for immediate family members and ensuring residence permits are only granted for the duration of the beneficiary's protection status". He adds, however, that the UK does not participate in the EU Family Reunification Directive, which provides for a child recognised as a refugee in a Member State to sponsor his or her parent's entry and residence, on the grounds that "it creates perverse incentives for children to leave family units and risk dangerous journeys into Europe in order to sponsor relatives".[57] He continues:

55 See para 27 of the Minister's Explanatory Memorandum.
56 See para 29 of the Minister's Explanatory Memorandum.
57 See Directive 2003/86/EC on the right to family reunification.

> "The Government would not support any measures to widen the scope of family reunion to include extended family members. It is noted that there is ongoing NGO pressure to extend the definition, which may impact on negotiations."[58]

Rights of beneficiaries of international protection

1.47 The Minister notes that the proposed Regulation would continue to differentiate between individuals granted refugee status and those granted subsidiary protection status in terms of the initial period of validity of their residence permits and the frequency of their renewal. He comments:

> "The Government proposes to differentiate leave in protection cases so that most refugees will benefit from a standard package of 3 years renewable limited leave at a time, though certain categories will be granted on a premium package and receive 5 years. The current proposals due to come into force in October 2016 will delay settlement in most cases for 10 years in line with other routes to settlement in the UK. We believe that delaying settlement is right, particularly in cases where the individual's behaviour is a factor, and the policy is designed to encourage people to claim asylum at the earliest opportunity in the first safe country they reach. In addition, granting protection based leave for only one year is likely to create a significant administrative burden on Member States if any review is to be meaningful."[59]

1.48 The Commission also proposes to harmonise the format of residence permits granted to beneficiaries of international protection, as well as the security features and biometrics contained in travel documents. Travel documents would be valid for a minimum of one year. The Minister observes:

> "The current format of the biometric residence permit has been in circulation in the UK since November 2008. The UK has been participating in the development of work to improve the security features of the uniform residence permit for other countries, in parallel to work on our own documentation, as this forms part of our strategy in tackling illegal migration.
>
> "The Government policy on issuing travel documents to beneficiaries is consistent with this approach, however we have concerns on whether the proposals on the uniform format are consistent with our own policy on issuing Biometric Residence Permits (BRPs) which we issue to all residents granted leave to enter or remain for more than six months."[60]

1.49 The Minister expresses concern that the choice of a Regulation rather than a Directive would mean that the UK would "lose the ability to decide the conditions under which

58 See para 30 of the Minister's Explanatory Memorandum.
59 See para 31 of the Government's Explanatory Memorandum.
60 See paras 32–3 of the Minister's Explanatory Memorandum.

employment can be accessed" by beneficiaries of international protection and indicates that the impact of this aspect of the proposal will require further consideration with other Government departments, including the Department for Work and Pensions.

1.50 The Minister considers that the provisions on unaccompanied children are "generally in line with UK policy". He notes that the proposed Regulation would allow Member States to make participation in integration measures compulsory for beneficiaries of international protection and adds:

> "this proposal goes further than the UK Government's current policy in this area. We agree with the basic arguments for improving integration and will work with partners where it is in our interests to do so. However, we see integration policy as a matter for the UK Government."[61]

Subsidiarity

1.51 The Minister provides the following overall assessment of the proposed Regulation:

> "We welcome the overarching aim of the proposal which discourages abuses and secondary movements. The migration crisis has highlighted the challenges presented by large scale secondary movements. Greater consistency of recognition rates would go some way to tackling unwarranted secondary movements and 'asylum shopping'."[62]

1.52 However, in his subsidiarity assessment, the Minister is more guarded:

> "This Regulation seeks to ensure greater convergence in the way asylum claims are decided and the content of protection granted, therefore reducing secondary movements within the EU and ensuring beneficiaries of international protection are treated equally. The Commission states that as common standards are required across all Member States, these objectives cannot be dealt with by Member States individually. Whilst there is some merit to the argument that the objectives of this proposal can be better achieved at the level of the Union rather than by the Member States alone, there is equally an argument that Member States could achieve this individually. The Government considers that the UK would also be able to set its own standards."[63]

The UK's Title V opt-in decision

1.53 The Minister reiterates in familiar terms the Government's current position on the outcome of the referendum on UK membership of the EU:

> "On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all

61 See para 36 of the Minister's Explanatory Memorandum.
62 See para 37 of the Minister's Explanatory Memorandum.
63 See para 15 of the Minister's Explanatory Memorandum.

> the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation."[64]

1.54 He notes that the UK's Title V opt-in applies to the proposed Regulation and that the three-month deadline for notifying the UK's opt-in decision is expected to expire on 1 December (time starts to run from the date on which the last language version is published). The Minister says that the Government "is considering its approach to the opt-in in light of the EU referendum result" and will confirm its approach "shortly". He continues:

> "In any event, a decision to opt in will only take place if it is considered to be in the national interest to do so."

1.55 He sets out the factors that will help to inform the Government's opt-in decision:

- The fact that the UK currently remains bound by the 2004 Qualification Directive but does not participate in the later recast 2011 Qualification Directive;
- The possibility that the proposed Regulation could be improved and unacceptable elements removed during negotiations, if the UK were to opt in;
- The opt-in decisions the Government takes on other aspects of the Commission's reform package (the Dublin rules, Eurodac, the EU Agency for Asylum, asylum procedures and reception conditions);
- The fact that the UK does not participate in the Long-Term Residents Directive (which the proposed Regulation would amend);
- The implications for the UK of being partially, but not fully, involved in a reformed common European asylum system;
- The extent to which it is "necessary" to opt in or whether the UK could "apply common standards within domestic legislation"; and
- The impact of the referendum result on the UK's relationship with the EU and negotiations on the UK's exit from the EU.[65]

1.56 If the UK were to opt into the proposed Regulation, the Minister does not anticipate that it would have "significant additional financial implications" for the UK, but adds that a more systematic process for reviewing protection status once it has been granted would require "an additional administrative process" which would have resource implications.[66]

Timetable for negotiations

1.57 Following a "high-level presentation" of the Commission proposal to the Council in July, detailed negotiations are expected to begin in September. The Minister notes

64 See para 16 of the Minister's Explanatory Memorandum.
65 See para 18 of the Minister's Explanatory Memorandum.
66 See para 43 of the Minister's Explanatory Memorandum.

that negotiations will run concurrently with discussions on the other elements of the Commission's asylum reform package. He does not expect agreement to be reached this year.

Previous Committee Reports

None, but see our earlier Report on the Commission Communication, *Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe*: Thirty-third Report HC 342-xxxii (2015–16), chapter 3 (11 May 2016) and our Reports on the first package of EU asylum reform proposals (proposed Regulations on the Dublin rules, Eurodac and the EU Agency for Asylum): Sixth Report HC 71-iv (2016–17), chapter 1 and chapter 2 (15 June 2016) and Seventh Report HC 71-v (2016–17), chapter 1 (6 July 2016).

2 Establishing a common EU asylum procedure

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; opt-in decision recommended for debate on the floor of the House together with Council document 11316/16, a proposal for a Regulation on standards for the qualification of third country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC concerning the status of third country nationals who are long-term residents; drawn to the attention of the Home Affairs Committee
Document details	Proposal for a Regulation establishing a common procedure for international protection in the European Union and repealing Directive 2013/32/EU
Legal base	Article 78(2)(d) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Numbers	(37968), 11317/16 + ADDs 1–2, COM(16) 467

Summary and Committee's conclusions

2.1 Fair and efficient asylum procedures are essential to ensure that individuals fleeing persecution or armed conflict are able to have their claims for international protection considered swiftly.[67] The EU's asylum rule book—the common European asylum system— establishes common standards for the treatment of asylum seekers, including the procedures and safeguards to be applied by Member States when deciding whether or not to grant international protection. These common standards are intended to reduce fragmentation and increase mutual trust in Member States' national asylum systems. In practice, the Commission believes that the current procedures, set out in the 2013 Asylum Procedures Directive, are too complex, too lengthy, and leave too much discretion in the hands of Member States, resulting in different treatment and outcomes depending on the Member State in which an application for international protection is submitted. It suggests that the absence of fully harmonised asylum procedures across the EU creates "pull factors" which draw individuals to Member States with the most favourable asylum recognition rates and reception conditions, contributes to "secondary movements and asylum shopping", and results in an uneven distribution of asylum seekers and sharing of responsibility amongst Member States.[68]

67 The term "asylum" and "international protection" are used interchangeably in this chapter. They encompass claims which result in the conferral of refugee status under the UN Refugee Convention and other forms of subsidiary protection which are not a direct result of individual persecution but where an individual would be at risk of "serious harm" (including from armed conflict) if returned to his or her country of origin.

68 See p.2 of the Commission's explanatory memorandum accompanying the proposed Regulation.

2.2 The Commission proposes to repeal the 2013 Asylum Procedures Directive and replace it with a directly applicable Regulation establishing a fully harmonised common EU asylum procedure which is intended to:

- simplify, clarify and shorten procedures;
- ensure common treatment and procedural guarantees for asylum seekers, regardless of the Member State in which they claim asylum;
- strengthen rules to prevent and sanction any abuse of the asylum system; and
- harmonise rules on safe countries outside the EU.

2.3 The proposed Regulation forms part of a package of reforms put forward by the Commission to develop "an integrated, sustainable and holistic EU migration policy based on solidarity and fair sharing of responsibilities and which can function effectively both in times of calm and crisis".[69] The first phase of reforms, proposed in May, focuses on changes to the Dublin system—a set of procedural rules supported by an asylum database (Eurodac) which allocate responsibility for each asylum application made within the EU to a single Member State (usually the Member State through which an individual first entered the EU)—and to the European Asylum Support Office, transforming it into the European Union Agency for Asylum with stronger powers to monitor and improve the overall functioning of the common European asylum system.[70] The second (and final) phase of reforms (which includes the proposed Regulation) sets out changes to substantive EU asylum laws determining who qualifies for international protection, the procedures applicable to asylum claims and how asylum seekers are to be treated while their claims are being examined. The package also includes a proposal for a structured EU resettlement framework which is intended to reduce the flow of irregular migrants by providing safe and legal pathways to the EU for third country nationals who are in need of international protection.[71] All of the proposals are subject to the UK's Title V (justice and home affairs) opt-in, meaning that the UK will only be bound by them if the Government decides to opt in.

2.4 According to the EU Commissioner for Migration (Dimitris Avramopoulos):

> "The changes will create a genuine common asylum procedure and guarantee that asylum seekers are treated in an equal and appropriate manner, regardless of the Member State in which they make their application. At the same time, we set clear obligations and duties for asylum seekers to prevent secondary movements and abuse of the procedures. Our objective is to have a common system which is quick, efficient and based on harmonised rules and mutual trust between Member States."[72]

2.5 The Immigration Minister (Mr Robert Goodwill) sets out the Government's position following the referendum on the UK's membership of the EU:

69 See p.2 of the Commission's explanatory memorandum accompanying the proposed Regulation.
70 See our Sixth Report HC 71-iv (2016–17), chapter 1 and chapter 2 (15 June 2016) and our Seventh Report HC 71-v (2016–17), chapter 1 (6 July 2016).
71 See the Commission's fact sheet on its proposed reform of the common European asylum system.
72 See the press release issued by the Commission on 13 July 2016.

> "On 23 June the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation."[73]

2.6 He identifies the factors which the Government will take into account in deciding whether or not to opt into the proposed Regulation and the Government's position on "the main thematic areas" covered by the proposal. He recognises the importance of delivering "fast and efficient asylum processes that balance the rights of applicants with the ability of Member States' national authorities to determine applications and tackle abuse" but questions whether "a one size fits all approach" will work. He suggests that the shift from a standard-setting Directive which "permits Member States to make accommodations when transposing the provisions to reflect their national law" to a directly applicable Regulation would have "profound implications for national sovereignty in this policy area".[74]

2.7 **The UK's patchwork participation in EU asylum measures complicates the task of analysing the impact of the proposed Regulation on asylum law and practice in the UK. If the Government decides to opt into the proposal, we expect the Minister to provide** a **full analysis of the changes that would be needed to bring UK law into line with common EU standards, as well as his assessment of their overall impact on international protection standards in the EU.**

2.8 **The Minister accepts that there is "some merit" in the Commission's argument that a common asylum procedure may help to ensure greater equity in the treatment of individuals applying for international protection within the EU and enhance clarity and legal certainty, whilst also reducing "incentives for asylum shopping and secondary movements between Member States". He adds, however, that "there is equally an argument that Member States could achieve this individually, taking into account their national circumstances". In weighing the justification for EU action, we expect the Government to assess the strength of the arguments for and against and come to a clear conclusion on the relative benefits of regulating at EU or national level. It is not self-evident that unilateral national action would produce the degree of coordination needed to prevent secondary movements on the scale witnessed within the EU in recent months. We ask the Minister whether the objectives he supports—a clear obligation on individuals applying for international protection to cooperate with national authorities, accompanied by procedural sanctions to discourage "abusive behaviour" and unauthorised secondary movements between Member States—could be sufficiently achieved by Member States, without further EU intervention.**

2.9 **The Minister expresses concern that the choice of a directly applicable Regulation, rather than a standard-setting Directive which has to be implemented in national law, would "reduce the ability of Member States to set their own procedural standards and so has a more profound impact on national sovereignty".[75] We ask him to clarify:**

73 See para 14 of the Minister's Explanatory Memorandum.
74 See paras 18 and 26 of the Minister's Explanatory Memorandum.
75 See para 13 of the Minister's Explanatory Memorandum.

- **whether his concern stems solely from the choice of legal instrument or from particular provisions contained in it which present a particular threat to national sovereignty; and**
- **how else, other than by means of a Regulation, it would be feasible for the Commission to secure reforms which do not replicate the fragmentation in national asylum systems resulting from the existing EU Directives.**

2.10 **The Minister accepts that there may be some benefit in establishing a common EU approach on safe third countries but questions how easy it will be for Member States to agree a common list of safe countries. We remind him that we await a response to questions we raised last October on an earlier Commission proposal to designate six Western Balkans countries and Turkey as safe countries of origin. We reiterate our request for the Government's view on the proposed inclusion of Turkey.**[76]

2.11 **Our previous chapter on the proposed revision of EU rules determining who qualifies for international protection (the Qualification Regulation) notes the emphasis placed by the Commission on the interdependence of its asylum reform proposals. Given the scale and ambition of the reforms, and the vital role that asylum procedures play in establishing a humane, fair and effective asylum system, we consider that the proposed Regulation should be included in the opt-in debate we have recommended on the proposed Qualification Regulation. We suggest that the debate should consider the merits of the Commission's reform package, the legal, practical and political feasibility of opting into some, but not all, of the reform proposals, and the wider implications for the UK once it has left the UK. We would like to hear whether there are any elements of the reform package which the Government would wish to replicate in its own domestic asylum laws or practices and what impact differential rules on asylum procedures in the EU and the UK may be expected to have on the UK asylum system post-Brexit.**

2.12 **The proposed Regulation remains under scrutiny. As well as providing the information we have requested, we ask the Minister for an indication of the initial reactions of other Member States to the Commission's reform package and progress reports on any negotiations that take place before the opt-in debate. We draw this chapter to the attention of the Home Affairs Committee.**

Full details of the documents

Proposal for a Regulation establishing a common procedure for international protection in the European Union and repealing Directive 2013/32/EU: (37968), 11317/16 + ADDs 1–2, COM(16) 467.

Background

2.13 Chapter 1 of this Report on the proposed revision of EU rules on who qualifies for international protection describes the UK's patchwork participation in the common European asylum system. The UK participates fully in the Dublin system and also opted into the first raft of EU asylum laws adopted between 2003 and 2005, including

76 See our Sixth Report HC 342-vi (2015–16), chapter 8 (21 October 2015) and our Sixteenth Report HC 342-xv (2015–16), chapter 13 (6 January 2016).

a 2005 Directive establishing minimum standards on the procedures to be applied by Member States when considering whether to grant or withdraw refugee status. The 2005 Directive remains binding on the UK but has been replaced for most other Member States by the 2013 Asylum Procedures Directive—part of a second raft of EU asylum laws introduced between 2011 and 2013—which contains more far-reaching procedural rules covering claims based on the UN Refugee Convention (refugee status) and a second form of protection (subsidiary protection) for individuals at "real risk of suffering serious harm" if returned to their country of origin.[77] It is these later EU asylum laws which the Commission's recent reform proposals seek to change.

2.14 The Commission has held "targeted consultations" with Member States, the UN Refugee Agency (UNHCR) and civil society representatives. Member States have generally welcomed the proposed replacement of the 2013 Asylum Procedures Directive by a Regulation and expressed support for further efforts to clarify and simplify existing procedural rules, introduce time limits to make procedures more efficient, and discourage secondary movements, but views on harmonising safe country concepts and making their use compulsory were mixed. Other stakeholders cautioned against the risk of lowering protection standards to achieve a common denominator, particularly as "the Union is a principal model to look up to in this area of international refugee law".[78] They questioned whether stricter time limits could be reconciled with the need to ensure that procedural guarantees were effective and whether the compulsory use of safe country concepts and special procedures were justified.

The proposed Regulation

2.15 The principal objective of the proposed Regulation is to establish a common EU asylum procedure which applies to all international protection claims made within the EU, is "efficient, fair and balanced" and enables Member States to take "quick but solid decisions".[79] The choice of a directly applicable Regulation is intended to remove the procedural variants which are permissible under the 2013 Asylum Procedures Directive and achieve "a higher degree of harmonisation and greater uniformity in the outcome of asylum procedures across all Member States".[80] The Commission anticipates that its proposal will simplify and streamline asylum procedures, strengthen procedural guarantees for applicants, ensure "fast but high quality decision making at all stages" of the asylum process so that applicants are able to clarify their legal status sooner, and provide the tools needed to prevent abuse of the system and deter secondary movements.[81] In the following paragraphs, we set out the main changes proposed by the Commission and their intended purpose.[82] Given the length and complexity of the proposed Regulation and the existing rules it would replace, our analysis draws largely on the commentary provided by the Commission in its explanatory memorandum accompanying the proposal.

77 The 2005 Directive applies to all Member States except Denmark. The 2013 Directive does not apply to Denmark, Ireland or the UK.

78 See p.8 of the Commission's explanatory memorandum accompanying the proposed Regulation.

79 See pp.3–4 of the Commission's explanatory memorandum accompanying the proposed Regulation.

80 See p.4 of the Commission's explanatory memorandum accompanying the proposed Regulation.

81 See pp.4 and 11 of the Commission's explanatory memorandum accompanying the proposed Regulation.

82 See the Commission's infographic on the changes proposed.

Streamlining and simplifying asylum procedures

2.16 The changes proposed by the Commission seek not only to clarify and simplify asylum procedures, but to make them shorter, not least so that individuals who do not qualify for international protection can be returned more quickly. The proposed Regulation would maintain the six-month benchmark for reaching an initial decision on an application for international protection but introduce new time limits at other stages of the asylum procedure. The Commission recognises that the time limits may be challenging for Member States but underlines the need for applicants to have "legal certainty" and says that additional operational and technical assistance will be available from the proposed EU Asylum Agency.

2.17 Under the proposed Regulation, an applicant would have ten working days to lodge a formal application for international protection once it has been registered by the relevant national authority (the current rules stipulate that it should be lodged "as soon as possible"). In the case of unaccompanied asylum-seeking children the ten-day time limit would only start to run once a guardian has been appointed and has met the child.[83] Time limits for registering, lodging and concluding the initial examination of an application for international protection may be extended if there is "a disproportionate number" of individuals applying at the same time or if (at the examination stage) the application raises complex issues of fact or law.[84] An uncertain and evolving situation in an applicant's country of origin may also be grounds for delay, but the proposed Regulation stipulates that there should be regular reviews (at least every two months) and that the examination of the application for international protection must be concluded within 15 months of the date on which it was formally lodged.[85]

2.18 To ensure that Member States are able to meet these time limits, they would be required to assess the capacity and needs of their asylum authorities on a regular basis and provide the necessary resources. The proposed Regulation makes clear that they may request assistance from other Member States or the proposed EU Asylum Agency to fulfil their tasks, particularly at times of disproportionate pressure.[86]

2.19 The proposed Regulation would also introduce time limits for procedures concerning the admissibility of an application for international protection and for applications which are subject to an accelerated procedure. An application may be rejected as inadmissible without considering its merits if the applicant has already enjoyed "sufficient protection" in another (non-EU) country before reaching the EU ("a first country of asylum") or has come from "a safe third country" and is able to be returned there safely.[87] In both cases, procedures to determine the admissibility of an application should be concluded within ten working days.[88] An application may also be regarded as inadmissible if it has been made following an earlier rejection ("a subsequent application") without presenting any new elements. In such cases, a one-month time limit applies.[89]

83 See Article 32(2) of the proposed Regulation.

84 See Articles 27–8 on registering and lodging an application for international protection. The time limit for registering and lodging an application may be extended from three to 10 working days and from 10 working days to up to one month respectively. Article 34 envisages that the six month deadline for concluding the initial examination may be extended by no more than three months.

85 See Article 34(5) of the proposed Regulation.

86 See Article 5 of the proposed Regulation.

87 See Articles 36, 44 and 45 of the proposed Regulation.

88 See Article 34(1) of the proposed Regulation.

89 See Article 34(1) of the proposed Regulation.

2.20 Some applications must be examined on their merits but are subject to an accelerated procedure because, for example, the applicant has come from a safe country of origin or is considered a danger to national security or public order. The proposed Regulation would introduce a two-month time limit for completing the initial examination, reduced to eight working days for applications which are made to "delay or frustrate" the enforcement of a removal order.[90] New time limits for appealing decisions taken on applications for international protection and for reaching decisions on appeal are dealt with later under the heading, "Right to an effective remedy".

Rights and obligations of applicants for international protection

2.21 The changes proposed by the Commission are intended to clarify the rights and obligations of applicants throughout the asylum procedure. Turning first to obligations, the proposed Regulation would require applicants to:

- make their application in the Member State of first entry (if an irregular migrant) or the Member State in which they are legally present;[91]
- cooperate with the competent national authorities by providing the information needed to establish their identity and nationality, as well as fingerprints, facial image and any relevant documentation, complying with the time limits for lodging an application for international protection, and submitting evidence to substantiate their application;[92] and
- provide contact details, comply with any reporting obligations and remain in the Member State which is responsible (under the Dublin rules) for examining the application.[93]

2.22 Applicants who fail to cooperate, including by refusing to provide fingerprints and a facial image, are at risk of their application being rejected or dealt with by means of an accelerated procedure.[94] Given the potential severity of the sanction for non-cooperation, the proposed Regulation would require Member States to inform applicants in good time of their rights and obligations throughout the asylum procedure and the possible consequences of non-compliance.[95]

2.23 Once an application for international protection has been lodged, the proposed Regulation would require the responsible Member State to:

- provide applicants (within three working days) with a document certifying their status and confirming their right to remain pending an examination of their application—it should also indicate whether there are any restrictions on movement and whether the applicant is entitled to work, and make clear that the document does not constitute a valid travel document;[96] and

90 See Article 40(2) of the proposed Regulation.
91 See Article 7(1) of the proposed Regulation.
92 See Article 7(2) of the proposed Regulation.
93 See Articles 7(4) and (5) of the proposed Regulation.
94 See Articles 7(3), 39 and 40(1)(g) of the proposed Regulation.
95 See Article 8(2) of the proposed Regulation. Under Article 31(8)(i) of the 2013 Asylum Procedures Directive, a failure to provide fingerprints is one of the grounds for applying an accelerated procedure.
96 See Article 29 of the proposed Regulation.

- inform applicants of the outcome of their application, the reasons for the decision and how it can be challenged.[97]

2.24 The right to remain in a Member State pending the completion of the asylum procedure does not constitute an entitlement to a residence permit, nor does it confer a right to travel to another Member State unless for an authorised reason. It can be revoked in exceptional circumstances, for example to comply with an extradition request.[98]

Procedural guarantees

2.25 The Commission recognises that its objective of shortening asylum procedures should not adversely affect applicants' right to an "adequate and comprehensive" examination of their claim for international protection. The proposed Regulation would include the following procedural guarantees, most of which build on existing rights contained in the 2013 Asylum Procedures Directive:

- The right to be heard before any decision is taken on the admissibility or merits of an application for international protection—the right to a personal interview is subject to strict exceptions and the applicant is entitled to be assisted by an interpreter.[99]

- A new requirement to record the interview by audio or audio-visual means, supplementing the existing requirement to provide a thorough and factual report or transcript of each interview.[100]

- The right to consult "in an effective manner" a legal adviser at the applicant's own expense or to request free legal assistance and representation at all stages of the procedure (including appeals), subject to limited exceptions.[101]

2.26 The Commission considers that extending access to legal assistance and representation is necessary to ensure that applicants are able to exercise their rights within the shorter time limits envisaged in the proposed Regulation and to improve the quality of decision making at the initial (administrative) stage, possibly reducing the number of appeals or the proportion of decisions that are overturned on appeal.

Stronger procedural safeguards for vulnerable applicants and unaccompanied children

2.27 The main innovation in relation to unaccompanied asylum-seeking children is the requirement to appoint a guardian for each child. The guardian would be responsible for safeguarding the child's best interests and "general well-being" and would be able to represent and assist the child throughout the asylum procedure.[102] Where necessary, the guardian could also exercise legal capacity on behalf of the child.[103] To ensure that guardians are able to perform their tasks effectively and that unaccompanied children

97 See Article 8(2) of the proposed Regulation.
98 See Article 9 of the proposed Regulation.
99 See Articles 10–12 of the proposed Regulation.
100 See Article 13 of the proposed Regulation.
101 See Articles 14–17 of the proposed Regulation.
102 See Article 22 of the proposed Regulation.
103 See Article 4(2)(f) of the proposed Regulation.

receive adequate support, the proposed Regulation stipulates that a guardian should not be assigned a "disproportionate" number of children. The Commission believes that greater standardisation of guardianship practices is needed across the EU:

> "Disparities among the various guardianship systems for unaccompanied minors in the Member States may lead to procedural safeguards not being adhered to, to minors not receiving adequate care or to them being exposed to risk or precarious situations and possibly leading them to abscond."[104]

2.28 The "best interests of the child" must be the primary consideration when assessing all applications made by or on behalf of a child (whether or not accompanied) and each child is entitled to a personal interview which must be conducted in "a child-sensitive and context-appropriate manner".[105]

2.29 More generally, the proposed Regulation would require national authorities to assess "systematically" whether each applicant for international protection is vulnerable and in need of special procedural guarantees as soon as an application is made. Vulnerability may be inferred from physical signs or the applicant's statements or behaviour. Applicants who may have been subject to "torture, rape or another serious form of psychological, physical, sexual or gender-based violence" which may, as a result, adversely affect their ability to participate in the asylum procedure, must be referred to a doctor or psychologist for further assessment of their psychological and physical state. The outcome of their physical examination should be taken into account in determining the type of special procedural support they need.[106]

The use of accelerated and border procedures

2.30 The 2013 Asylum Procedures Directive allows but does not require Member States to apply an accelerated examination procedure in certain circumstances.[107] The proposed Regulation would make this procedure compulsory for applications which are "*prima facie* manifestly unfounded" for the following reasons:

- An applicant makes clearly inconsistent or false representations, misleads the authorities by presenting false information, or seeks to delay or frustrate the enforcement of a return decision.
- An applicant is from a safe country of origin.
- An applicant failed to comply with the requirement to seek asylum in the Member State of first entry (if an irregular migrant) or the Member State in which he or she was legally present, in accordance with the proposed revision of the Dublin rules.
- An applicant may, "for serious reasons", be considered a danger to national security or public order.

104 See p.15 of the Commission's explanatory memorandum accompanying the proposed Regulation.

105 See Article 22 of the proposed Regulation.

106 See Articles 19 and 20 of the proposed Regulation. Although the assessment takes place at an early stage in the asylum procedure, the proposed Regulation recognises that the need for special procedural guarantees may be identified (and should be addressed) at a later stage.

107 See Article 31(8) of the 2013 Asylum Procedures Directive.

- An applicant has submitted a further application for international protection, following an earlier refusal, which is "so clearly without substance or abusive that it has no tangible prospect of success".[108]

2.31 The accelerated examination procedure should be concluded within two months (or eight working days if the application has been made to delay or frustrate a return decision). National authorities may revert to the regular procedure if the application involves complex issues of fact or law.

2.32 The use of border procedures—where a decision on the merits of an application for international protection is taken at the border or within a transit zone—would remain optional under the proposed Regulation. A border procedure may be used to determine the admissibility of an application for international protection or to consider the merits in cases which would otherwise be subject to the accelerated procedure. The procedure must be completed within four weeks—any delay means that the applicant must be admitted to the territory of the Member State concerned so that the application can be considered under the accelerated or regular asylum procedure.[109] The reason given by the Commission for the shorter time limit is that border procedures "normally imply the use of detention".[110]

2.33 The Commission makes clear that all of the usual procedural safeguards apply to applicants whose claims are being examined under an accelerated or border procedure. The proposed Regulation limits the circumstances in which these procedures can be applied to unaccompanied children and specifies that they may only be applied to other vulnerable applicants if they are guaranteed adequate support.[111]

Admissibility of applications for international protection

2.34 The proposed Regulation would require Member States to reject an application as inadmissible if the applicant has come either from a first country of asylum outside the EU or a safe third country and can safely be returned to that country. The procedure for determining admissibility on these grounds must be concluded within ten working days. A one month time limit applies where the admissibility procedure concerns "subsequent applications"—those made following the rejection of an earlier application and which raise no new elements or findings—or separate applications made by a spouse, partner or accompanied child who previously consented to an application being made on their behalf.[112] Applications found to be inadmissible are not examined on their merits but "the basic principles and guarantees" set out in the proposed Regulation largely apply. Under the changes proposed by the Commission to the Dublin rules, the first Member State in which an application for international protection is lodged should carry out the admissibility procedure if the applicant is from a first country of asylum or a safe third country.[113] The admissibility procedure need not be applied in cases which are considered to be manifestly unfounded.[114]

108 See p.16 of the Commission's explanatory memorandum and Article 40 of the proposed Regulation.
109 See Article 41 of the proposed Regulation.
110 See p.16 of the Commission's explanatory memorandum accompanying the proposed Regulation.
111 See Articles 19(3), 40(5) and 41(5) of the proposed Regulation.
112 See Articles 34 and 36 of the proposed Regulation.
113 See our Sixth Report HC 71-iv (2016–17), chapter 1 (15 June 2016).
114 See Article 36 of the proposed Regulation.

Treatment of subsequent applications

2.35 The changes proposed by the Commission are intended to clarify and simplify the treatment of subsequent applications and prevent their use as a means of delaying or frustrating the conclusion of the asylum procedure. An application made by the same applicant, following the rejection of an earlier application for international protection, would (as now) be subject to a preliminary examination to determine whether there are any "relevant new elements or findings" which would significantly increase the likelihood of being granted international protection or reversing an earlier finding of inadmissibility. The preliminary examination would involve written submissions and, in most cases, a personal interview unless it is clear that there are no new elements or that the application is "clearly without substance and has no tangible prospect of success". The applicant would not, however, be entitled to free legal assistance and representation.[115] The preliminary examination may result either in the opening of a new procedure to assess the merits of the application or the rejection of the application as inadmissible or manifestly unfounded. If the latter, Member States would be entitled (but not required) to withdraw the right to remain on their territory pending any appeal.[116]

Safe country concepts

2.36 The Commission considers that the concept of "safe countries" is an essential tool to support the swift processing of applications for international protection. The 2013 Asylum Procedures Directive includes rules on safe countries but leaves it to Member States to decide whether or not to apply them. The proposed Regulation would introduce harmonised rules on safe countries and make it compulsory for Member States to apply them.

2.37 There are three categories of safe countries: the first country of asylum, a safe third country, and a safe country of origin. Under the first country of asylum concept, an application made by an individual who has come from a country in which she or he enjoyed "sufficient protection", as defined in the proposed Regulation, and where that protection would continue to be available if she or her were returned, must be rejected as inadmissible.[117] Similarly, an application made by an individual who has come from a safe third country, as defined in the proposed Regulation, must also be rejected as inadmissible.[118] The main difference between the first country of asylum and the safe third country concepts is that, for the former, the applicant has *already enjoyed* some form of protection, whereas for the latter, there is *a possibility* of obtaining similar protection.[119]

2.38 The first country of asylum concept only applies if the applicant has previously been given protection in a third country. By contrast, the safe third country concept applies if the circumstances of an individual applicant appear to meet the conditions set out in the proposed Regulation or if the applicant has a connection with a third country formally designated as "safe" at EU level or (but only for a five-year transitional period) at national level. The reason for the transitional period is to give time for the Commission to propose

115 See Article 15(3)(c) of the proposed Regulation.
116 See Articles 42–3 of the proposed Regulation.
117 See Articles 36 and 44 of the proposed Regulation.
118 See Articles 36 and 45 of the proposed Regulation.
119 See p.18 of the Commission's explanatory memorandum accompanying the proposed Regulation.

a fully harmonised list of safe third countries which would replace national lists and guarantee that the safe third country concept is applied in the same way in all Member States.[120]

2.39 The third category—the safe country of origin concept—only applies to countries which meet the conditions set out in the proposed Regulation and have been formally designated as safe.[121] Applications for international protection made by nationals of a designated safe country of origin are dealt with by an accelerated procedure and must be rejected as "manifestly unfounded" if the applicant is unable to demonstrate that the country is unsafe in his or her individual circumstances.[122] Annex 1 to the proposed Regulation designates seven safe countries of origin: Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia and Turkey.[123]

2.40 In September 2015, the Commission proposed a separate Regulation establishing a common EU list of safe countries of origin which includes the same seven countries.[124] The Commission expects this more limited Regulation to be adopted first but says that it should subsequently be incorporated into the proposed new Asylum Procedures Regulation before it is adopted and the earlier Regulation repealed. The Commission's aim is to move towards fully harmonised designations of safe countries of origin at EU level. It therefore proposes that national lists of safe countries of origin as well as safe third countries should be phased out during a five-year transitional period.[125] The Commission expects the proposed EU Asylum Agency to play an important role in providing the evidence base to support EU-level designations of safe third countries and safe countries of origin.

Right to an effective remedy

2.41 The right to an effective remedy means that applicants should be able to challenge an adverse decision on its facts and on points of law and to remain pending the outcome of an appeal. There are exceptions to the right to remain but, where they apply, an applicant is entitled to seek a ruling from the court allowing him or her to stay pending an appeal. In such cases, the proposed Regulation confers more extensive rights than the 2013 Asylum Procedures Directive.[126] It stipulates that applicants shall have "the necessary interpretation, legal assistance and sufficient time" to make their case to the court requesting leave to remain pending the outcome of their appeal.[127] The Commission considers that more extensive rights are justified as the proposed Regulation would introduce strict and binding time limits for lodging an appeal.[128]

2.42 The 2013 Asylum Procedures Directive requires Member States to "provide for reasonable time limits" to enable applicants to exercise their right to an effective remedy. By contrast, the proposed Regulation would require appeals to be lodged within time

120 See p.18 of the Commission's explanatory memorandum and Article 46 of the proposed Regulation.
121 See Article 47 of the proposed Regulation.
122 See Article 37(3) of the proposed Regulation.
123 See Article 48 of the proposed Regulation and ADD 1.
124 See our Sixth Report HC 342-vi (2015–16), chapter 8 (21 October 2015) and our Sixteenth Report HC 342-xv (2015–16), chapter 13 (6 January 2016).
125 See p.19 of the Commission's explanatory memorandum and Articles 48 and 50 of the proposed Regulation.
126 Article 46(7) of the 2013 Asylum Procedures Directive limits the applicant's right to apply to a court to remain in a Member State pending an appeal to decisions made at the border.
127 See Article 54 of the proposed Regulation.
128 See p.20 of the Commission's explanatory memorandum accompanying the proposed Regulation.

limits varying from one week to one month, depending on the grounds on which an application for international protection has been rejected.[129] It also stipulates that decisions on appeal should be given within six months in cases where the regular asylum procedure has been applied and within one or two months in cases involving different procedures (for example, an admissibility procedure, an accelerated or a border procedure). A three month extension is possible if the decision on appeal involves complex issues of fact or law.[130] The Commission considers that time limits are necessary to "ensure equity and effectiveness in the procedure and to meet the overall objective of greater harmonisation".[131]

Withdrawal of international protection

2.43 The proposed Regulation reflects changes contained in the proposed Regulation establishing the criteria for determining who qualifies for international protection which would require Member States to undertake regular status reviews to verify whether there is a continuing need for protection. As these status reviews would be compulsory, the proposed Regulation would strengthen existing procedural guarantees to ensure that the individuals concerned have the right to a personal interview before any decision is made to withdraw international protection and, in the event of an adverse decision, to have access to free interpretation services and to legal assistance and representation.[132]

Legal base and subsidiarity

2.44 The proposed Regulation is based on Article 78(2)(d) of the Treaty on the Functioning of the European Union (TFEU) which authorises the EU to adopt measures establishing common procedures for the granting and withdrawal of a uniform refugee or subsidiary protection status. The Commission considers that further action is needed at EU level to replace divergent national asylum procedures with a common procedure which is governed by the same rules and ensures "equity in the treatment of applications for international protection, clarity and legal certainty for the individual applicant" regardless of the Member State in which the application is made. The Commission adds:

> "Member States cannot individually establish common rules which will reduce incentives for asylum shopping and secondary movements between Member States. Therefore, action by the Union is required."[133]

The Minister's Explanatory Memorandum of 4 August 2016

2.45 The Minister explains that the UK opted into and remains bound by the first Asylum Procedures Directive adopted in 2005, but did not opt into the 2013 Asylum Procedures Directive which the proposed Regulation would repeal and replace. The Commission's own explanatory memorandum accompanying the proposal indicates that some elements largely reflect the 2013 Asylum Procedures Directive and, as such, do not represent significant change. The Minister notes that this is not necessarily the case for the UK since

129 See Article 53(6) of the proposed Regulation.
130 See Article 55 of the proposed Regulation.
131 See p.12 of the Commission's explanatory memorandum accompanying the proposed Regulation.
132 See Articles 51–52 of the proposed Regulation.
133 See pp.6–7 of the Commission's explanatory memorandum accompanying the proposed Regulation.

its obligations stem from the earlier 2005 Directive. He does not attempt an "exhaustive" analysis of all aspects of the proposed Regulation but focuses on the Commission's choice of legal instrument and the "main thematic areas" it covers.

The use of a Regulation instead of a Directive

2.46 The Minister notes that a Regulation is directly applicable. Any domestic asylum laws conflicting with the proposed Regulation would have to be amended if the UK were to opt into the proposal. He suggests that moving from a standard-setting Directive to a Regulation that "by its nature restricts flexibility" would have "profound implications for national sovereignty", adding:

> "We therefore anticipate that the negotiations in Council will be complex, as many Member States seek to maintain their sovereignty in this policy area."[134]

Simpler, clearer and shorter procedures

2.47 The Minister notes that the setting of time limits to access the asylum procedure is based on a three-step approach: making, registering and lodging an application for international protection. The first step—making an application—occurs when an individual "expresses a wish for international protection".[135] He expresses concern that "there remains the possibility of a considerable gap in time" between indicating a wish to apply for asylum and the actual transmission of an applicant's fingerprints to the Eurodac database. Under the current Eurodac Regulation, the 72-hour time limit for taking and transmitting fingerprints to the Eurodac database starts to run from the formal lodging of an application for international protection.[136] The Minister continues:

> "We believe that in order to ensure accurate records of 'asylum seeking' individuals in Eurodac there should be greater alignment between the time when an individual identifies themselves to competent national asylum authorities as an asylum seeker and his or her data being recorded in Eurodac as such. This would reduce the opportunities for early secondary movements of 'asylum seekers' to go unnoticed in terms of comparisons made within the Eurodac database."[137]

2.48 In order to meet the time limits prescribed by the proposed Regulation, Member States would be required to assess the resource needs of their asylum authorities and put in place contingency plans where necessary to ensure that they have the capacity to deal effectively with a large number of asylum applicants. The Minister notes that successive Dublin Regulations have included a similar provision requiring Member States to ensure that there is adequate resourcing to meet their obligations. He comments:

> "It is laudable that the Commission has included this requirement, but we note that enforcement of the Dublin Regulation's resourcing provisions has not been visible and we have doubts about the effect of the similar provision

134 See para 18 of the Minister's Explanatory Memorandum.

135 See Article 25 of the proposed Regulation.

136 The same 72-hour time limit applies under the Commission's proposed revision of the Eurodac Regulation but it would also apply to the transmission of facial images as well as fingerprints.

137 See para 20 of the Minister's Explanatory Memorandum.

> here, although there is a clear additional commitment in the proposal that Member States' authorities may be assisted by either the authorities of another Member State or experts deployed by the strengthened EU Asylum Agency for Asylum."[138]

2.49 The procedure for determining whether an application for international protection is admissible is closely linked to the Commission's proposed revision of the Dublin Regulation which would require a Member State to consider admissibility before establishing the Member State responsible for examining the asylum application on its merits. The Minister notes that this has proved to be "a highly controversial element" of negotiations on the revised Dublin Regulation and he anticipates that this will affect negotiations on the linked provisions in the proposed Asylum Procedures Regulation, adding that they are "unlikely to be straightforward".[139]

Stricter rules to combat abuse

2.50 The Minister welcomes measures to discourage "abuses and secondary movements", adding:

> "The migration crisis has highlighted the challenges presented by large scale secondary movements. We are pleased to see that the Commission has set out clear obligations for applicants to cooperate with national authorities and has included consequences for non-compliance. We strongly support the proposal that the examination of an application for asylum is made conditional upon compliance with fingerprinting requirements, providing details about the claim and presence/staying in the Member State responsible for examining the claim. We also support the inclusion of provisions that turn procedural sanctions for abusive behaviour, secondary movements and manifestly ('clearly') unfounded claims that are currently optional into compulsory ones: for example the clear list of circumstances where an application must be examined in an accelerated procedure, rejected as manifestly unfounded or considered abandoned (withdrawn).
>
> "Linked to the reform of the Dublin Regulation we welcome the proposal that applicants must make their application in the Member State of first entry or where he or she is legally present and that they should remain in the Member State in which they are required to be present."[140]

Common guarantees for every applicant

2.51 The Minister notes the Commission's efforts to strike a balance between efficiency, so that a decision on an application for international protection—whether positive or negative—can be given in the shortest possible time, and the proper examination of an application for international protection. He explains that a number of procedural safeguards, such as the right to a personal interview, are subject to exceptions:

138 See para 21 of the Minister's Explanatory Memorandum.
139 See para 22 of the Minister's Explanatory Memorandum.
140 See paras 23–24 of the Minister's Explanatory Memorandum.

> "A personal interview on the merits of the application for protection may be omitted where a positive decision declaring an application admissible or that refugee status is merited can be taken on the evidence already available. An interview may also be omitted if the applicant is unfit or unable to be interviewed owing to 'enduring circumstances beyond his or her control'."[141]

2.52 The Minister expresses concern that these provisions, which limit the circumstances in which a personal interview can be dispensed with, would conflict with current practice under the UK Immigration Rules—for example, an interview can be omitted (under paragraph 339NA of the Immigration Rules) if an individual raises issues which are not relevant to the examination of his or her application or the application is made merely to delay or frustrate the enforcement of an earlier or imminent decision that would result in removal.

2.53 The Minister anticipates that Member States may have to increase the financial and human resources available to their asylum authorities to ensure that they are able to process applications more effectively while also complying with the procedural guarantees set out in the proposed Regulation. Although Member States are encouraged to seek support from the proposed EU Agency for Asylum, the Minister considers that a "one size fits all" approach will present "considerable challenges", particularly when seen in the context of the Commission's wider asylum reform package. He notes that the new fairness mechanism in the proposed revision of the Dublin Regulation is intended to ensure a more equitable distribution of asylum seekers amongst Member States and is likely to "significantly increase the number of applicants in some Member States that have previously not encountered large numbers of applicants". He expects "issues of increased financial and administrative burdens at national level to feature heavily during the negotiations".[142] If the UK were to opt into the proposed Regulation, the Minister anticipates that there would be "significant additional financial implications" to bring the UK's asylum system and procedures into line with the new requirements. There would also be an additional call on the resources of the proposed EU Agency for Asylum.[143]

2.54 The Minister welcomes the inclusion of additional procedural guarantees for unaccompanied asylum-seeking children and other applicants with special procedural needs, as well as clarification that Member States may use accelerated procedures in these cases if adequate support and assistance is available.

Harmonised rules on safe countries

2.55 The Minister "agrees entirely" with the principle that asylum claims should be declared inadmissible if an individual "could and should have claimed asylum in a safe third country or first country of asylum", adding:

> "This is vital so that we can tackle asylum shopping and take action to prevent the irregular movements of migrants across Europe."[144]

141 See para 25 of the Minister's Explanatory Memorandum.
142 See para 26 of the Minister's Explanatory Memorandum.
143 See para 33 of the Minister's Explanatory Memorandum.
144 See para 28 of the Minister's Explanatory Memorandum.

2.56 He notes the Commission's intention to develop a harmonised list of safe third countries and acknowledges the benefits of a common approach, but questions how feasible it will be, given differences between Member States on the third countries to be included. He continues:

> "The debate at EU level on safe countries of origin is more advanced than that on safe third countries: this proposal therefore contains a common list of safe countries of origin reflecting recent discussions on the separate Commission proposal published in September 2015 […]. As a result the list contains Turkey, although the list is still subject to negotiation in its own right."[145]

Subsidiarity

2.57 The Minister can see some merit in the case made by the Commission for a common asylum procedure which ensures equitable treatment for all asylum applicants while reducing incentives for "asylum shopping and secondary movements" between Member States. He nevertheless considers that there is "equally an argument that Member States could achieve this individually, taking into account their national circumstances" and adds:

> "By choosing the form of a Regulation, which is directly applicable in all Member States, the Commission seeks to achieve a higher degree of harmonisation and greater uniformity in the outcome of procedures across the Member States. This does, however, reduce the ability of Member States to set their own procedural standards and so has a more profound impact on national sovereignty, which is of concern to many Member States, including the UK."[146]

The UK's Title V opt-in decision

2.58 The Minister notes that the UK's Title V opt-in applies to the proposed Regulation and that the three-month deadline for notifying the UK's opt-in decision is expected to expire on 8 December (time starts to run from the date on which the last language version is published). He says that the Government is committed to taking all opt-in decisions on a case-by-case basis, "putting the national interest at the heart of the decision making process". He sets out the factors which will inform the Government's opt-in decision:

- The fact that the UK remains bound by the 2005 Asylum Procedures Directive but does not participate in the later recast 2013 Asylum Procedures Directive.
- The possibility that the proposed Regulation could be improved and unacceptable elements removed during negotiations, if the UK were to opt in.

145 See para 29 of the Minister's Explanatory Memorandum.
146 See paras 12–13 of the Minister's Explanatory Memorandum.

- The opt-in decisions the Government takes on other elements of the Commission's asylum reform package (covering the Dublin rules, Eurodac, the EU Agency for Asylum, qualification for international protection and reception conditions).
- The implications for the UK of being partially, but not fully, involved in a reformed common European asylum system.
- The extent to which it is "necessary" to opt in or whether the UK could "apply common standards within domestic legislation".
- The impact of the referendum result on the UK's relationship with the EU and negotiations on the UK's exit from the EU.[147]

Timetable for negotiations

2.59 Following a "high-level presentation" of the key features of the proposal to the Council in July, detailed negotiations are expected to begin in September. The Minister notes that negotiations will run concurrently with discussions on other elements of the Commission's asylum reform package and that an agreed text is unlikely to emerge this year.

Previous Committee Reports

None on this document, but see our earlier Report on the Commission Communication, *Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe*: Thirty-third Report HC 342-xxxii (2015–16), chapter 3 (11 May 2016) and our Reports on the first package of EU asylum reform proposals (proposed Regulations on the Dublin rules, Eurodac and the EU Agency for Asylum): Sixth Report HC 71-iv (2016–17), chapter 1 and chapter 2 (15 June 2016) and Seventh Report HC 71-v (2016–17), chapter 1 (6 July 2016).

147 See paras 15–17 of the Minister's Explanatory Memorandum.

3 Revision of EU rules on reception conditions for asylum seekers

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; opt-in decision recommended for debate on the floor of the House together with Council document 11316/16, a proposal for a Regulation on standards for the qualification of third country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC concerning the status of third country nationals who are long-term residents and Council document 11317/16, a proposal for a Regulation establishing a common procedure for international protection in the European Union and repealing Directive 2013/32/EU; drawn to the attention of the Home Affairs Committee
Document details	Proposal for a Directive laying down standards for the reception of applicants for international protection (recast)
Legal base	Article 78(2)(f) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Numbers	(37969), 11318/16, COM(16) 465

Summary and Committee's conclusions

3.1 What treatment should individuals fleeing persecution or armed conflict be entitled to receive if they apply for international protection within the EU? Can differences in treatment create "pull factors" which draw applicants to Member States offering more generous conditions, making it harder to ensure a more equitable distribution of asylum seekers amongst Member States?[148] The Commission's proposed revision of the 2013 Reception Conditions Directive seeks to respond to both of these questions by ensuring that all Member States provide "sufficient and decent reception conditions" while an application for international protection is being examined and reducing "wide divergences" in the reception conditions currently provided by Member States. The changes form part of a package of reforms to the common European asylum system—the body of EU laws determining who qualifies for international protection, the procedures applicable to asylum claims and how asylum seekers are to be treated while their claims are being examined—which is intended to guarantee that asylum seekers are treated in "an equal and appropriate manner" wherever they are in the EU.[149]

148 The term "asylum" and "international protection" are used interchangeably in this chapter. They encompass claims which result in the conferral of refugee status under the UN Refugee Convention and other forms of subsidiary protection which are not a direct result of individual persecution but where an individual would be at risk of "serious harm" (including from armed conflict) if returned to his or her country of origin.

149 See p.2 of the Commission's explanatory memorandum accompanying the proposed recast Directive.

3.2 The current 2013 Reception Conditions Directive establishes common minimum standards for the treatment of asylum seekers covering access to healthcare, housing, schooling, vocational training and employment. It also sets out the circumstances in which asylum seekers may be detained and the conditions of detention. The Commission considers that further harmonisation is needed to establish more equal reception standards which ensure "dignified treatment" and a fairer distribution of asylum seekers across the EU and to reduce "reception-related asylum shopping and secondary movements" between Member States. The Commission recognises, however, that full harmonisation is neither feasible nor desirable given the "significant differences in Member States' social and economic conditions".[150] It has therefore proposed a new "recast" Reception Conditions Directive which retains many of the features of the 2013 Directive but also includes new elements which Member States will have to incorporate in their national asylum laws. The changes to reception conditions are the only element of the Commission's reform package which does not take the form of a directly applicable Regulation. The Commission's aim is to develop a common European asylum system which is both "effective and protective", ensures "full convergence" between national asylum systems, reduces incentives for secondary movements, and strengthens mutual trust between Member States.[151]

3.3 The Immigration Minister (Mr Robert Goodwill) notes that all of the proposals forming part of the Commission's reform package are subject to the UK's Title V (justice and home affairs) opt-in. He recognises the importance of minimum reception standards for individuals applying for international protection within the EU and sets out the factors which the Government will take into account in deciding whether or not to opt into the proposed Directive. He accepts that there is "some merit" in the argument advanced by the Commission that action at EU level is necessary to ensure greater convergence in reception conditions, reducing the incentives for "asylum shopping and secondary movements", but suggests that "there is equally an argument that Member States could achieve this individually".[152]

3.4 **The UK's patchwork participation in EU asylum measures complicates the task of analysing the impact of the proposed Directive on asylum law and practice in the UK. If the Government decides to opt into this proposal on reception conditions, we expect the Minister to provide** a **full analysis of the changes that would be needed to bring UK law into line with common EU standards, as well as his assessment of their overall impact on international protection standards in the EU.**

3.5 **The Minister accepts that there is some merit in the Commission's argument that greater harmonisation of reception conditions at a level which ensures the dignified treatment of asylum seekers may contribute to a reduction in "asylum shopping" and secondary movements between Member States. He then adds that "there is equally an argument" that Member States could achieve these objectives individually. In weighing the justification for EU action, we expect the Government to assess the strength of the arguments for and against and come to a clear conclusion on the relative benefits of regulating at EU or national level. If, as the Minister appears to suggest, the Government's preference would be for the UK to set its own standards, we ask him**

150 See p.6 of the Commission's explanatory memorandum accompanying the proposed recast Directive.
151 See p.2 of the Commission's explanatory memorandum accompanying the proposed recast Directive.
152 See paras 16–17 of the Minister's Explanatory Memorandum.

to explain whether and how unilateral national action would produce the degree of convergence in reception conditions needed to prevent secondary movements on the scale witnessed in the EU in recent months.

3.6 **It is disappointing that the Minister has so little to say on the substance of the proposed Directive. We note that the provisions on material reception conditions continue to draw a distinction between a level of support ensuring "an adequate standard of living" and more limited support (imposed as a sanction for non-compliance with the conditions set out in the proposal) ensuring "a dignified standard of living". Does the Minister believe that a meaningful distinction can be drawn between an "adequate" and a "dignified" standard of living and is such a distinction made in the UK's domestic asylum laws?**

3.7 **Unlike all the other measures forming part of the Commission's asylum reform package, which take the form of directly applicable Regulations, the proposed changes to reception conditions are included in a Directive which must be given effect in Member States' domestic laws. The Commission attributes the choice of a Directive to "significant differences in Member States' social and economic conditions" which mean that it is neither "feasible nor desirable" to seek full harmonisation. It therefore intends to strengthen the role of the proposed EU Agency for Asylum in promoting "a uniform implementation of reception standards in practice", based on operational standards developed by the Agency and regular monitoring.[153] Does the Minister agree that the degree of oversight envisaged for the Agency is appropriate and necessary to secure effective convergence in the provision of reception conditions by Member States?**

3.8 **The Commission emphasises the interdependence of its asylum reform package, with each component forming "an indispensable part" of a comprehensive overhaul of the common European asylum system based on "common, harmonised rules that are both effective and protective" and designed to ensure "full convergence" between national asylum systems within the framework of "a well-functioning Dublin system".[154] Given the scale and ambition of the reforms, and the importance of reception conditions in ensuring dignified treatment of individuals while their applications for international protection are being examined, we consider that the proposed Directive should be included in the opt-in debate we have recommended on the other elements of the asylum reform package. We suggest that the debate should consider the merits of the Commission's reform package, the legal, practical and political feasibility of opting into some, but not all, of the reform proposals, and the wider implications for the UK once it has left the EU. We would like to hear whether there are any elements of the reform package which the Government would wish to replicate in its own domestic asylum laws or practices once the UK has left the EU and what impact differential rules on reception conditions in the EU and the UK may be expected to have on the UK asylum system post-Brexit.**

3.9 **The proposed Directive remains under scrutiny. As well as providing the information we have requested, we ask the Minister for an indication of the initial**

153 See p.6 of the Commission's explanatory memorandum accompanying the proposed recast.

154 See p.3 of the Commission's explanatory memorandum accompanying the proposed Regulation.

reactions of other Member States to the Commission's reform package and progress reports on any negotiations that take place before the opt-in debate. We draw this chapter to the attention of the Home Affairs Committee

Full details of the documents

Proposal for a Directive laying down standards for the reception of applicants for international protection (recast): (37969), 11318/16, COM(16) 465.

Background

UK participation in the common European asylum system

3.10 The common European asylum system has been phased in over a number of years. The UK participates fully in the Dublin system, a set of procedural rules supported by an asylum database (Eurodac) which allocate responsibility for each application for international protection made within the EU to a single Member State—usually the Member State through which an individual first entered the EU. It also participates in the European Asylum Support Office (EASO). The Commission proposed a first set of reforms in May which focus on changes to the Dublin system and the transformation of EASO into the European Union Agency for Asylum with stronger powers to monitor and improve the overall functioning of the common European asylum system.[155]

3.11 The Commission's second (and final) set of reforms, published in July, propose changes to substantive EU asylum laws determining who qualifies for international protection, the procedures applicable to asylum claims and how asylum seekers are to be treated while their claims are being examined. The package also includes a proposal for a structured EU resettlement framework which is intended to reduce the flow of irregular migrants by providing safe and legal pathways to the EU for third country nationals who are in need of international protection. Although the UK opted into the first raft of substantive EU asylum laws adopted between 2003 and 2005, it did not opt into (and so is not bound by) further changes to EU asylum laws agreed between 2011 and 2013. It is these later EU asylum laws which the Commission's recent reform proposals seek to change. All of the proposals are subject to the UK's Title V (justice and home affairs) opt-in, meaning that the UK will only be bound by them if the Government decides to opt in.

The Reception Conditions Directive

3.12 The UK opted into, and remains bound by, the 2003 Reception Conditions Directive but has not opted into the recast 2013 Reception Conditions Directive. The main difference between them is that the 2013 Directive has a broader scope, encompassing individuals whose claim for international protection may result either in refugee status or subsidiary protection status, whereas the 2003 Directive only encompasses individuals applying for refugee status under the UN Refugee Convention unless Member States choose to extend its application to other forms of protection.[156] Another significant difference is the absence

155 See our Sixth Report HC 71-iv (2016–17), chapter 1 and chapter 2 (15 June 2016) and our Seventh Report HC 71-v (2016–17), chapter 1 (6 July 2016).

156 See the *UN Refugee Convention* chapter1 which explains the difference between refugee status and subsidiary protection status.

of any provisions on the detention of asylum seekers in the 2003 Directive. By contrast, the 2013 Directive includes extensive provisions on the circumstances in which an asylum seeker may be detained, the conditions of detention and the rights of a detained applicant. The 2013 Directive also includes more detailed provisions on unaccompanied minors and other vulnerable applicants, the education of asylum-seeking children, access to the labour market, healthcare and other "material reception conditions" covering housing and other essentials, such as food and clothing.

3.13 The Commission has consulted Member States and other stakeholders on its asylum reform proposals. It reports that most Member States favour further harmonisation of reception conditions, including a more consistent approach to measures restricting the freedom of movement of applicants for international protection, but views differ on the circumstances in which essential items, such as food and clothing, should be provided "in kind". Other stakeholders continue to caution against the risk that further harmonisation may lead to a lowering of reception standards and underline the need for Member States to retain the flexibility to provide more favourable reception conditions. They also highlight difficulties in applying the concept of an "adequate" or "dignified standard of living" under the 2013 Reception Conditions Directive and support the development of operational standards and indicators on reception conditions by the European Asylum Support Office. Most stakeholders (including Member States) see some value in reviewing the conditions in which asylum seekers may access the labour market in order to enhance integration prospects and promote self-reliance.[157]

3.14 Based on its consultation, the Commission has rejected the idea of a common EU benchmark for determining the level of financial support to be provided to applicants for international protection for two reasons. First, most Member States use a combination of financial support and "in kind" benefits. Second, the Commission notes that current levels of financial support are in most cases "well below all the possible benchmarks or thresholds examined (at risk of poverty threshold, severely materially deprived threshold, and minimum income threshold)". Harmonising support levels would therefore mean increasing the level of support in many Member States and could result in more favourable treatment being given to applicants for international protection than to Member State nationals facing destitution or who are otherwise economically disadvantaged.[158]

The proposed recast Directive

3.15 The changes proposed by the Commission are intended to ensure greater consistency in reception conditions across the EU and in Member States' capacity to guarantee "dignified treatment" at all times, even when confronted by a disproportionate influx of individuals seeking international protection.[159] They also complement the Commission's proposed revision of the Dublin rules by making an individual's entitlement to the full range of reception conditions conditional on being present in the Member State responsible for examining the substantive application for international protection.

3.16 The changes included in the proposed recast Directive are informed by a "reception conditions mapping exercise" undertaken by the European Asylum Support Office earlier this year which revealed considerable variation in Member States' understanding of

157 See pp.7–8 of the Commission's explanatory memorandum accompanying the proposed recast Directive.
158 See p.8 of the Commission's explanatory memorandum accompanying the proposed recast Directive.
159 See the Commission's infographic on the main changes proposed in the recast Directive.

material reception conditions, the way in which they are provided, and the reasons for reducing or withdrawing them, as well as differences (ranging from one to nine months) in the time frame for allowing access to the labour market.[160] In the following paragraphs, we summarise the main changes proposed by the Commission and their intended purpose.

Further harmonisation of reception conditions

3.17 The proposed recast Directive would, as now, apply to all third country nationals and stateless individuals who apply for international protection within or at the external border of a Member State. It would, however, introduce a number of changes which are intended to promote greater convergence in the treatment of applicants for international protection. The changes include:

- ***Removal of the right to access full reception conditions if an individual is in a Member State other than the one designated as responsible for his or her asylum application under the Commission's proposed reform of the Dublin system***: one of the principles underpinning the Dublin reforms is that asylum applicants do not have a right to choose where their application is lodged or examined. The revised Dublin rules would accordingly require irregular migrants (those whose entry is unauthorised) to apply for international protection in the Member State of first entry; those who have entered the EU lawfully would be required to apply in the Member State in which they are legally present.[161] The proposed Directive would sanction non-compliance with the Dublin rules by removing the right to access education and schooling, the right to access the labour market and vocational training, and the right to other material reception conditions, including housing. Despite these restrictions, Member States nevertheless remain under an obligation to ensure "a dignified standard of living" for *all* applicants, as well as access to healthcare and to "suitable education activities" pending a transfer to the responsible Member State designated by the Dublin rules.[162]

- ***Guarantees that any exceptions to the material reception conditions specified in the proposed Directive must, in any event, ensure access to healthcare and "a dignified standard of living"***: Member States may, as now, apply different reception standards for individuals who have special reception needs or to overcome temporary housing shortages, but the proposed Directive introduces a new requirement to report any exceptional measures to the proposed EU Agency for Asylum and to ensure dignified treatment.[163]

- ***Extension of the definition of family members to include relationships formed after leaving the country of origin but before arriving in the Member State in which international protection is sought***: the change would ensure

160 See pp.8–9 of the Commission's explanatory memorandum accompanying the proposed recast Directive.
161 See our Sixth Report HC 71-iv (2016–17), chapter 1 (15 June 2016).
162 See Article 17a of the proposed recast Directive.
163 See Article 17(9) of the proposed recast Directive.

consistency with the proposed revision of the EU Qualification Directive and, the Commission believes, reduce the risk of irregular movements between Member States for the purpose of family reunification.[164]

- ***An enhanced role for the European Asylum Support Office/EU Agency for Asylum***: the proposed Directive would introduce a new requirement for Member States to "take into account" any operational standards, indicators or guidelines on reception conditions developed by the EASO/Agency and to cooperate with the new monitoring and assessment role envisaged for the Agency which is intended to identify deficiencies in Member States' implementation of the common European asylum system and seek to address them as early as possible.[165]

- ***Contingency planning***: Member States would be required to draw up (and update every two years) a contingency plan demonstrating how they would be able to ensure adequate reception conditions in the event of a disproportionate number of individuals applying for international protection. The proposed EU Agency for Asylum would have to be notified of the plans and their activation, and would have a role in monitoring their adequacy.[166]

- ***Special reception needs***: the definition of an applicant with special reception needs would be extended to include any individual requiring special guarantees to benefit from the rights and comply with the obligations set out in the proposed Directive.[167] The proposal would require Member States to assess on a systematic basis whether each applicant for international protection has any special needs. The initial assessment should be undertaken as early as possible in the asylum procedure by trained personnel and may include a referral to a doctor or psychologist.[168]

- ***Appointment of a guardian for unaccompanied asylum-seeking children***: the proposed Directive would require a guardian to be appointed within five working days of the date on which an application for international protection is made and stipulates that guardians should not be placed in charge of a disproportionate number of children.[169]

Reducing incentives for secondary movements

3.18 The Commission considers that "wide divergences" in reception conditions have made some Member States more attractive for asylum seekers and contributed to secondary movements within the EU. The proposed recast Directive would introduce a number

164 See Article 2(3) of the proposed recast Directive and p.11 of the Commission's explanatory memorandum accompanying the proposal.

165 See Article 27 of the proposed recast Directive and our Seventh Report HC 71-v (2016–17), chapter 1 (6 July 2016).

166 See Article 28 of the proposed recast Directive.

167 See Article 2(13) of the proposed recast Directive. It includes a new illustrative list of individuals who may have special reception needs.

168 See Article 21 of the proposed recast Directive.

169 See Article 23 of the proposed recast Directive.

of restrictions on free movement in an effort to ensure that applicants for international protection remain in the Member State responsible for examining their application. The changes proposed include:

- ***Early provision of information on rights and obligations***: Member States would be required to provide information as soon as possible (and, at the latest, when lodging an application for international protection) using a standard template developed by the proposed EU Agency for Asylum. The information should make clear that applicants are only entitled to access material reception conditions in the Member State designated by the Dublin rules as responsible for examining their asylum application.[170]

- ***Restrictions on freedom of movement***: whilst the proposed Directive would maintain the right to move freely within the host Member State or within an assigned area, it would extend the grounds on which a Member State may require an applicant to reside in a specific place and, in such cases, makes the provision of material reception conditions (housing, food, clothing and other essential items) conditional on actual residence in the specified place. The new grounds for restricting movement are intended to facilitate the "swift processing and effective monitoring" of applications for international protection and/or the Dublin procedures for determining the responsible Member State and to prevent applicants from absconding once the responsible Member State has been determined. Member States may also impose reporting obligations on applicants considered to be at risk of absconding.[171] The proposed Directive includes a new definition of "absconding" and of applicants at risk of absconding. The definition is intended to encompass "both a deliberate action to avoid the applicable asylum procedures and the factual circumstances of not remaining available to the relevant authorities, including by leaving the territory where the applicant is required to be present" under the Dublin rules. [172] Any decisions restricting freedom of movement must be based on an applicant's "individual behaviour and particular situation", set out the reasons in fact or law which are relied on, and be subject to appeal.[173]

- ***Clearer grounds for obtaining a travel document***: applicants for international protection would only be entitled to a travel document for "serious humanitarian or other imperative reasons" and its validity and duration would be similarly limited. According to the Commission, "other imperative reasons" could include essential travel for work purposes.[174]

- ***A broader and more consistent definition of material reception conditions***: the definition of material reception conditions in the 2003 and 2013 Reception Conditions Directives includes housing, food and clothing provided in kind, as financial allowances or as vouchers, as well as a daily

170 See Article 5 of the proposed recast Directive.
171 See Article 7 of the proposed recast Directive.
172 See Article 2(10) and (11) of the proposed recast Directive and p.13 of the Commission's explanatory memorandum accompanying the proposal.
173 See Article 7(7) and (8) of the proposed recast Directive.
174 See Article 6 of the proposed recast Directive and p.14 of the Commission's explanatory memorandum accompanying the proposal.

expenses allowance. The Commission notes that some Member States also provide non-food items, such as sanitary products, whereas others do not. The proposed Directive would include essential non-food items within the definition.[175]

- ***More limited flexibility to reduce or withdraw material reception conditions***: the proposed Directive would make clear that Member States may not reduce or withdraw an applicant's entitlement to accommodation, food, clothing and other essential items if present in the Member State designated as responsible for his or her asylum application under the Dublin rules. It does, however, expand the circumstances in which Member States may reduce or (exceptionally) withdraw an applicant's daily allowance or provide material reception conditions "in kind" rather than in the form of financial allowances or vouchers.[176]

- ***A limited expansion of the grounds on which an applicant may be detained***: the proposed Directive would allow Member States to detain an applicant if he or she has been instructed to reside in a specific place and his or her non-compliance creates a risk of absconding.[177] The Commission makes clear that the applicant must have been made aware of the consequences of non-compliance and that detention on any of the grounds envisaged in the proposed Directive is only justified on the basis of an individual assessment and if other less coercive measures cannot be applied effectively.[178]

Enhancing integration and self-reliance—improved labour market access

3.19 The 2003 Reception Conditions Directive envisages that applicants for asylum should have access to the labour market within a year of making their claim, but leaves it to each Member State to determine the conditions of access. The 2013 Reception Conditions Directive requires Member States to provide labour market access within nine months of lodging an application for international protection and, in determining the conditions of access, to ensure that it is "effective". The Commission considers that early access to the labour market helps to reduce dependency and reception costs, encourages self-reliance and enhances integration prospects. The proposed Directive would therefore require Member States to grant access to their labour markets within six months of lodging an application for international protection unless the application is being examined under an accelerated procedure on the grounds that it is likely to be unfounded.[179] The Commission suggests that access should be granted sooner—within three months—if the application is likely to be well-founded.[180] The proposed Directive makes clear that labour market access should be "effective" and in full compliance with labour market standards. Member States would be required to ensure equal treatment with Member State nationals in relation to working conditions, health and safety requirements, freedom of association

175 See Article 2(7) of the proposed recast Directive.

176 See Article 19 of the proposed recast Directive. The new circumstances include non-compliance with Dublin rules requiring an individual to apply for international protection in the Member State of first entry (if an irregular migrant) or of legal entry, evidence of absconding, failure to take part in compulsory integration measures, and a serious violation of the rules of the applicant's accommodation centre or seriously violent behaviour.

177 See Article 8(3)(c) of the proposed recast Directive.

178 See p.15 of the Commission's explanatory memorandum accompanying the proposed recast Directive.

179 See Article 15 of the proposed recast Directive.

180 See p.15 of the Commission's explanatory memorandum accompanying the proposed recast Directive.

and affiliation, education and vocational training (but excluding grants and loans for this purpose), recognition and validation of qualifications, and social security. Member States may impose some restrictions, including on access to family and unemployment benefits.

Legal base and subsidiarity

3.20 The proposed recast Directive is based on Article 78(2)(f) of the Treaty on the Functioning of the European Union (TFEU) which provides for the adoption of EU measures establishing "standards concerning the conditions for the reception of applicants for asylum or subsidiary protection". The Commission considers that action at EU level is necessary to address "large differences in reception conditions between Member States and a lack of operational standards for dignified treatment of applicants" which contribute to "reception-related asylum shopping and secondary movements" within the EU. The Commission adds:

> "More equal reception standards set at an appropriate level across all Member States will contribute to a more dignified treatment and fairer distribution of applicants across the EU."[181]

The Minister's Explanatory Memorandum of 8 September 2016

3.21 The Minister explains that the UK opted into and remains bound by the first Reception Conditions Directive, adopted in 2003, but did not opt into the recast 2013 Reception Conditions Directive. As some provisions of the latest Commission proposal replicate those already enshrined in the 2013 Directive, the changes (if the Government were to decide to opt in) would be more extensive for the UK than for other Member States already bound by the 2013 Directive.

3.22 The Minister does not attempt "an exhaustive discussion" of all aspects of the proposed recast Directive but sets out the Government's view on "the main thematic areas".

Further harmonisation of reception conditions

3.23 The Minister "recognises the importance of minimum reception standards for applicants for international protection", with national authorities determining how they should be provided.[182] He welcomes the inclusion of additional provisions on the reception of unaccompanied asylum-seeking children, noting that the obligations concerning the appointment and monitoring of guardians "are in line with UK policy".[183]

Reducing incentives for secondary movements

3.24 The Minister notes that "the migration crisis has highlighted the challenges presented by large scale secondary movements of asylum seekers" and welcomes measures to discourage such movements. He highlights, in particular, the possibility of requiring an applicant for international protection to reside in a specific place, adding:

181 See p.6 of the Commission's explanatory memorandum accompanying the proposed recast Directive.
182 See para 23 of the Minister's Explanatory Memorandum.
183 See para 25 of the Minister's Explanatory Memorandum.

> "We note that a decision to assign such residence may be required when an applicant has not complied with their obligations, for example, if an applicant does not make an application for international protection in the Member State of first irregular or legal entry."[184]

Increasing integration prospects

3.25 The Minister says that it is Government policy to "prioritise access to employment for those who are lawfully present in the UK". He continues:

> "As the UK remains bound by the Directive 2003/9/EC, the time limit for access to the labour market which applies is twelve, rather than nine months. In the UK, asylum seekers are only allowed to work if their asylum claim, or further submission, has been outstanding for more than 12 months through no fault of their own. Those who are allowed to work are restricted to jobs on the shortage occupation list, which was introduced in the last Parliament under the Coalition Government.
>
> "The Government believes that it is entirely appropriate to restrict access to employment to protect the resident labour market for British citizens and those with leave to remain in the UK, including those admitted under the Immigration Rules for employment or business purposes and those granted protection. It also serves to discourage those who do not need international protection from claiming asylum for economic reasons to benefit from employment opportunities that they would not otherwise be eligible for."[185]

Subsidiarity

3.26 The Minister describes the objectives of the proposed Directive—to ensure greater convergence in reception conditions in the EU, thereby reducing incentives for secondary movements and increasing integration prospects—and recognises that "there is some merit to the argument" that these objectives can be better achieved by action at EU level. He continues:

> "There is equally an argument that Member States could achieve this individually. The Government considers that the UK would also be able to set its own standards."[186]

The UK's Title V opt-in decision

3.27 The Minister reiterates in familiar terms the Government's current position on the outcome of the referendum on UK membership of the EU:

> "On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all

184 See paras 26–27 of the Minister's Explanatory Memorandum.
185 See paras 28–30 of the Minister's Explanatory Memorandum.
186 See paras 16–17 of the Minister's Explanatory Memorandum.

> the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation."[187]

3.28 He confirms that the UK's Title V (justice and home affairs) opt-in applies to the proposed Directive and that the three month opt-in deadline for notifying the UK's opt-in decision is expected to expire on 8 December (time starts to run from the date on which the last language version is published). The Minister sets out the factors that will help to inform the Government's opt-in decision, adding that "the Government is committed to taking all opt-in decisions on a case-by-case basis, putting the national interest at the heart of the decision making process". The main factors are:

- "the extent and likelihood to which we think the proposal could be improved and whether any unacceptable elements could be removed during negotiations, if we do opt in;
- "our opt-in decisions on the asylum reform package as a whole, which includes Dublin, Eurodac and EU Agency for Asylum proposals published earlier in the year;
- "the implications of being partially, but not fully, involved in a reformed Common European Asylum System;
- "the implications of not opting in for our broader relationship with the EU and its institutions, and with other Member States bilaterally—in particular for our ability to promote our own agenda in EU fora and to secure co-operation and support from other Member States on immigration and wider areas of Justice and Home Affairs; and
- "the result of the referendum on the UK's relationship with the EU and negotiations on the UK's exit from the EU."[188]

Timetable for negotiations

3.29 Following a "high-level presentation" of the key features of the proposed Directive to the Council in July and a short exchange of views, detailed negotiations are expected to begin in September. The Minister considers than an agreement is unlikely to be reached this year. He explains:

> "It is clear that discussions of this text will of necessity run in conjunction with those for the other Commission proposals presented at the same time by the Commission and also those presented in May, in particular concerning the reform of the Dublin and Eurodac Regulations, which have procedural elements (the Dublin Regulation representing a procedure that is part of the overall asylum procedure)."

187 See para 18 of the Minister's Explanatory Memorandum.
188 See paras 20–21 of the Minister's Explanatory Memorandum.

Previous Committee Reports

None on this document, but see our earlier Report on the Commission Communication, *Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe*: Thirty-third Report HC 342-xxxii (2015–16), chapter 3 (11 May 2016) and our Reports on the first package of EU asylum reform proposals (proposed Regulations on the Dublin rules, Eurodac and the EU Agency for Asylum): Sixth Report HC 71-iv (2016–17), chapter 1 and chapter 2 (15 June 2016) and Seventh Report HC 71-v (2016–17), chapter 1 (6 July 2016).

4 Establishing an EU framework for the resettlement of individuals in need of international protection

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; opt-in decision recommended for debate on the floor of the House together with Council document 11316/16, a proposal for a Regulation on standards for the qualification of third country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC concerning the status of third country nationals who are long-term residents; Council document 11317/16, a proposal for a Regulation establishing a common procedure for international protection in the European Union and repealing Directive 2013/32/EU; and Council document 11318/16, a proposal for a Directive laying down standards for the reception of applicants for international protection (recast)—decisions reported on 14 September 2016; drawn to the attention of the Home Affairs Committee
Document details	Proposal for a Regulation establishing a Union Resettlement Framework
Legal base	Article 78(2)(d) and (g) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Numbers	(37966), 11313/16, COM(16) 468

Summary and Committee's conclusions

4.1 3,673 individuals lost their lives crossing the Mediterranean in 2015. More than 3,000 have died since the beginning of 2016, despite efforts to coordinate more effective search and rescue operations.[189] Although the flow of migrants in the Eastern Mediterranean, from Turkey to Greece, has fallen substantially since March following the implementation of an agreement between the EU and Turkey to stem irregular migration, the International Organisation for Migration (IOM) reports that one in every 24 migrants died attempting the Central Mediterranean crossing from North Africa to Italy in the first six months of 2016.[190] In August, the non-governmental organisation Médécins Sans Frontières (MSF) reported that it had assisted with the rescue of around 3,000 people in a single day, part of a

189 See the International Organisation for Migration's data on Migration Flows to Europe and on Recorded Deaths in the Mediterranean 2014–16.

190 See the briefing published by the IOM's Global Migration Data Analysis Centre in August 2016.

larger influx of nearly 6,500 individuals attempting the perilous sea crossing. It has urged the EU to "put in place measures that will provide safe and legal alternatives for refugees and migrants to access the assistance and protection they are desperately seeking".[191]

4.2 Resettlement is intended to provide individuals who are fleeing persecution or armed conflict with a safe and legal means of entry to a country of refuge, without the need to resort to treacherous journeys over land and sea. Resettlement also cuts off at source the people smuggling networks which exploit the vulnerability of migrants, mitigates the risk of large-scale and spontaneous (unplanned) inflows of irregular migrants, and helps to alleviate the pressure on countries and regions hosting a disproportionate number of displaced individuals.

4.3 According to the UN Refugee Agency (UNHCR), around one million refugees and migrants made their way to Europe in 2015, constituting one of the largest movements of displaced people through European borders since the Second World War. It expects resettlement needs in Europe to increase from 214,972 individuals in 2016 to 306,950 in 2017, fuelled by the conflict in Syria and the need to alleviate the pressure on neighbouring Turkey, since 2015 the largest refugee-hosting country in the world. The scale of projected resettlement needs contrasts starkly with the efforts made by EU Member States in 2015—17 of the 28 Member States resettled a total of only 9,629 individuals (1,768 in the UK).[192]

4.4 The EU provides funding to support Member States' resettlement efforts, based on their own national or multilateral resettlement programmes. To encourage a more collaborative approach, the EU has also agreed common resettlement priorities—Member States receive a higher level of funding for individuals resettled from an EU list of priority countries or regions or who are considered to be vulnerable.[193] There is, however, no EU framework establishing a comprehensive set of rules covering eligibility for resettlement, admission procedures, the status of individuals resettled within the EU, and the funding available for resettlement. The Commission has therefore proposed a Regulation creating such a framework. It believes this will also reduce divergences in Member States' resettlement practices and strengthen the EU's leverage at an international level. The Commission anticipates that a more structured EU approach would contribute to a gradual "scaling up" of Member States' collective resettlement efforts and enable the EU to contribute more effectively to global resettlement initiatives by making a single, EU-wide resettlement pledge. It says that its proposal should "discourage irregular and dangerous journeys and save lives" by offering "alternative legal pathways".[194]

4.5 According to the EU Commissioner for Migration (Dimitris Avramopoulos), the proposed Regulation represents "a major step" towards opening "a genuine legal window" for individuals in need of international protection and closing "the irregular backdoor" exploited by people smuggling networks. Member States would, as now, continue to determine how many individuals they are willing to resettle each year. However, they

191 See the press release issued by MSF on 30 August 2016.

192 See UNHCR's Report on Projected Global Resettlement Needs in 2017.

193 See Regulation (EU) No 516/2014 establishing the Asylum, Migration and Integration Fund for 2014-20. For the purposes of resettlement funding, vulnerable individuals encompass women and children at risk, unaccompanied minors, those with medical needs that can only be addressed through resettlement, and those with urgent legal or physical protection needs, such as victims of violence or torture.

194 See p.5 of the Commission's explanatory memorandum accompanying the proposed Regulation.

would only be eligible to receive EU funding for individuals resettled on the basis of the proposed EU settlement framework—purely national resettlement schemes would no longer qualify for financial support from the EU budget.

4.6 The proposed Regulation forms part of a wider package of measures to reform the common European asylum system—a body of EU rules determining who qualifies for international protection, the procedures applicable to asylum claims and how asylum seekers are to be treated while their claims are being examined. The purpose of the proposed reforms is to develop "an integrated, sustainable and holistic migration policy, based on solidarity and fair sharing of responsibilities, which can function effectively both in times of calm and crisis".[195] All of the proposals are subject to the UK's Title V (justice and home affairs) opt-in, meaning that the UK will only be bound by them if the Government decides to opt in.

4.7 Many stakeholders—the UN Refugee Agency, the International Organisation for Migration, and non-governmental organisations providing practical support and assistance to migrants and refugees—have a keen interest in the Commission's reform proposals and in the UK's policies and practices while it remains a member of the EU and once it has left. We reproduce in an Annex to this chapter the views submitted by one such non-governmental organisation, the International Rescue Committee.

4.8 The Immigration Minister (Mr Robert Goodwill) supports the use of resettlement to create "safe and legal routes to Europe" and to discourage individuals in need of international protection from embarking on "dangerous and illegal journeys" whilst also relieving the pressure on countries hosting large numbers of displaced people. He nevertheless questions whether the EU has the competence to act on resettlement and considers that resettlement schemes are "best decided at national level". He sets out the factors which the Government will take into account in deciding whether or not to opt into the proposed Regulation as well as the Government's position on the main elements of the Commission proposal.

4.9 **The Minister's predecessor (James Brokenshire) told us in February that "there is no competence in the Treaties for the EU to act on resettlement and that this should be left to Member States".[196] The Minister now tells us that "there is no *explicit* competence under the EU Treaties for the EU to act on resettlement" (our emphasis), leaving open the possibility that there may be an implied competence to act based on the powers given to the EU to develop a common policy on asylum, subsidiary and temporary protection. We ask the Minister to clarify the Government's position. Does the EU have the necessary competence to act? If not, does the Government intend to challenge the validity of the Regulation (if adopted) in the Court of Justice. Alternatively, does the Government consider that it would be sufficient for the UK not to opt in?**

4.10 **The Minister's subsidiarity analysis focuses exclusively on the question of competence, without addressing the justification advanced by the Commission for EU action. We consider that the Government should provide an assessment of the Commission's justification. We therefore ask the Minister to consider whether the objectives of the proposed EU resettlement framework—reducing divergences in**

195 See p.2 of the Commission's explanatory memorandum accompanying the proposed Regulation.

196 See para 13 of the Explanatory Memorandum of 1 February 2016 submitted by the then Immigration Minister (James Brokenshire).

national resettlement practices and procedures, increasing the EU's influence in policy dialogues with third countries, and alleviating the pressure on countries hosting a disproportionate number of displaced individuals—can be sufficiently achieved by Member States themselves or warrant action at EU level. Does he agree with the Commission that the adoption of an EU resettlement framework would help to "scale up" Member States' collective resettlement efforts and strengthen the EU's contribution to global resettlement initiatives?

4.11 **The Minister does not object to the Commission's choice of a directly applicable Regulation to establish the EU resettlement framework, despite having raised sovereignty concerns in relation to proposed Regulations determining who qualifies for international protection and establishing a common procedure for examining applications for international protection.[197] Should we infer that no similar concerns arise in relation to resettlement, or that the Government is already minded not to opt into the proposal?**

4.12 **The Minister says that he supports the use of resettlement to create safe and legal routes to Europe and to discourage dangerous and illegal journeys, but questions the definition of resettlement in the proposed Regulation which includes individuals displaced *within* their own country as well as those displaced to a third country. We ask the Minister to explain why he considers it necessary to draw a distinction between internal and external displacement and how such a distinction can be reconciled with the broader policy objectives he supports.**

4.13 **The Minister's main criticism of the proposed Regulation is that it would establish "mandatory redistributive mechanisms" similar to those already in place for the relocation of asylum seekers within the EU, rather than supporting "commitments made on a national, voluntary basis".[198] It is not clear to us that this is what is intended. The First Vice-President of the EU Commission (Frans Timmermans) has said that "Member States will decide how many people need to be resettled each year".[199] Article 7 of the proposed Regulation, which states that the EU resettlement plan agreed by the Council each year shall include "details about the participation of Member States […] and their contributions to the total number of persons to be resettled", does not suggest that participation would be mandatory or that Member States would be unable to determine individually the scale of the contribution they intend to make. We ask the Minister for his views.**

4.14 **The proposed Regulation would cut off EU funding for resettlement based on purely national schemes. The Minister does not address the financial implications for the UK if the Government were to decide not to opt in. We ask him to quantify the potential loss based on the proportion of existing UK resettlement activity which depends on EU funding.**

4.15 **Our previous chapters on the Commission's asylum reform package note the emphasis placed on the interdependence of all of its reform proposals. The proposed Regulation would add a new element to the existing body of EU asylum laws, establishing an EU framework for resettlement which seeks to operate "upstream",**

197 See chapters 1 and 2 of this Report.

198 See para 21 of the Minister's Explanatory Memorandum.

199 See the Commission's press release of 13 July 2016 on the proposed Regulation.

reducing the spontaneous arrival of large numbers of irregular migrants whose claims for international protection have overwhelmed the capacity of some Member States' asylum systems. We consider that it would be appropriate to include the proposed Regulation in the opt-in debate we have recommended on the other elements of the asylum reform package. We suggest that the debate should consider:

- **the merits of the Commission's reform package;**
- **the legal, practical and political feasibility of opting into some, but not all, of the reform proposals; and**
- **the wider implications for the UK once it has left the UK.**

4.16 **We would like to hear whether there are any elements of the reform package which the Government would wish to replicate in its own domestic asylum laws or practices once the UK has left the EU and what impact differential rules on resettlement procedures in the EU and the UK may be expected to have on the UK asylum system post-Brexit.**

4.17 **The proposed Regulation remains under scrutiny. As well as providing the information we have requested, we ask the Minister for an indication of the initial reactions of other Member States to the Commission's reform package and progress reports on any negotiations that take place before the opt-in debate. We also ask him to respond to the concerns raised with us by the International Rescue Committee. We draw this chapter to the attention of the Home Affairs Committee.**

Full details of the documents

Proposal for a Regulation establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014: (37966), 11313/16, COM(16) 468.

Background

4.18 The proposed Regulation builds on two recent EU initiatives to promote a more coherent approach to resettlement and other forms of humanitarian admission and to address a significant imbalance in the efforts made by different Member States. In July 2015, all 28 EU Member States (plus, Iceland, Norway, Switzerland and Liechtenstein) agreed collectively to resettle a total of 22,504 individuals in need of international protection during the period 2015–17, of whom 2,200 were to be resettled in the UK. The agreement makes clear that resettlement is based on "multilateral and national schemes, reflecting the specific situations of Member States".[200] As UNHCR has noted, the agreement is significant also as a number of countries—Bulgaria, Croatia, Cyprus, Estonia, Greece, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia—are implementing formal

200 See the Conclusions on resettlement agreed by the representatives of the Governments of the Member States meeting within the Council on 20 July 2015. See also our Reports on the Commission Recommendation on a European resettlement scheme which preceded the Conclusions: Twenty-fifth Report HC 342-xxiv (2015–16), chapter 25 (9 March 2016), Sixteenth Report HC 342-xv (2015–16), chapter 10 (6 January 2016) and Second Report HC 342-ii (2015–16), chapter 6 (21 July 2015).

resettlement programmes for the first time.[201] A year on from the agreement reached last July, Member States have resettled 8,268 individuals, mainly from Lebanon, Jordan and Turkey.[202]

4.19 In January 2016, following a sharp increase in the number of irregular migrants crossing the Aegean Sea from Turkey to Greece, the Commission adopted a Recommendation (which is not legally binding) inviting Member States to participate in a Voluntary Humanitarian Admission Scheme with Turkey. The scheme has a dual purpose: to encourage a sustainable reduction in the number of irregular border crossings from Turkey to the EU by offering "an orderly, managed, safe and dignified" passage to the EU for up to 80,000 displaced Syrians in Turkey each year. Syrians entering the EU under the humanitarian admission scheme would be entitled to remain in their host Member State for at least one year.[203]

4.20 The Voluntary Humanitarian Admission Scheme has been overshadowed by the agreement reached in March to end irregular migration from Turkey to the EU.[204] The agreement envisages the return to Turkey of all irregular migrants crossing the Aegean to the Greek Islands. In return, EU Member States will resettle one Syrian from Turkey for each Syrian returned to Turkey (the "one for one" principle), increase aid for Syrian refugees in Turkey, accelerate efforts to lift short-stay visa requirements for Turkish nationals travelling to the Schengen area (but not to the UK), and "re-energise" Turkey's negotiations for accession to the EU. The agreement took effect on 20 March and the first returns began in early April. By early July, Member States had resettled 803 Syrians from Turkey (764 of whom count towards the resettlement commitments agreed in July 2015).[205] The Voluntary Humanitarian Admission Scheme will be activated once there is evidence of a substantial and sustainable reduction in irregular migration from Turkey to the EU.

4.21 The Government has made clear that resettlement schemes are best decided at a national level and told us last December that "we will not be signing up to an EU scheme".[206] In May, the Government indicated that it viewed resettlement and humanitarian admission as "essentially the same" and that it would not participate in the Voluntary Humanitarian Admission Scheme with Turkey.[207] It said that "there is no competence in the Treaties for the EU to act on resettlement and that this should be left to Member States".[208] The Government has confirmed that the UK receives funding from the EU's Asylum, Migration and Integration Fund to support resettlement to the UK, but that the allocation is used to meet the UK's national priorities.[209]

201 See UNHCR's Report on Projected Global Resettlement Needs in 2017.
202 See Annex 3 to the Commission's fifth report on relocation and resettlement published on 27 July 2016.
203 See our earlier Reports on the voluntary humanitarian admission scheme for Syrian refugees in Turkey: Twenty-fourth Report HC 342-xxiii (2015–16), chapter 9 (24 February 2016) and Third Report HC 71-ii (2016–17), chapter 25 (25 May 2016).
204 See the EU-Turkey Statement of 18 March 2016.
205 See Annex 3 to the Commission's fifth report on relocation and resettlement published on 27 July 2016.
206 See the letter of 14 December 2015 from the then Immigration Minister (James Brokenshire) to the Chair of the European Scrutiny Committee.
207 See the letter of 6 May 2016 from the then Immigration Minister (James Brokenshire) to the Chair of the European Scrutiny Committee.
208 See para 13 of the Explanatory Memorandum of 1 February 2016 submitted by the then Immigration Minister (James Brokenshire).
209 See the letter of 25 February 2016 from the then Immigration Minister (James Brokenshire) to the Chair of the European Scrutiny Committee.

4.22 In response to the crisis in Syria, the Government announced in September 2015 that it would expand the UK's Syrian Vulnerable Person Resettlement Programme with a view to resettling up to 20,000 Syrian refugees in the UK during this Parliament.[210] Earlier this year, the Government made a further commitment to resettle an additional 3,000 vulnerable refugee children and their families from the Middle East and North Africa (MENA) region.[211] In May, the Government accepted the revised "Dubs' amendment" to the Immigration Bill which provides for a specified (but, as yet, undetermined) number of unaccompanied asylum-seeking children to be relocated to the UK from other European countries.[212] The Government indicated that it would seek to relocate children already registered in Greece, Italy or France before 20 March, the date on which the EU's deal with Turkey to prevent further irregular migration took effect. It also indicated that it would not put "a fixed number on arrivals" and that the first arrivals were expected "before the end of the year".[213]

The proposed Regulation

4.23 The purpose of the proposed Regulation is to establish a binding EU framework for the resettlement of third country nationals and stateless individuals who are in need of international protection.[214] The framework includes common criteria on eligibility for resettlement within a Member State (as well as grounds for exclusion) and common procedures on admission and other aspects of the resettlement process. It sets out the status to be accorded to individuals resettled within the EU and the financial support available to Member States. The proposed Regulation also establishes the procedures for agreeing an annual EU resettlement plan stipulating how many individuals are to be resettled in any given year, the main geographical areas they should be resettled from, and how they are to be distributed between Member States. The Commission makes clear that it will be for Member States to determine how many individuals they intend to resettle each year, acting within a framework which enables the EU to coordinate national efforts more effectively and ensures greater collective impact.[215] In the following paragraphs, we summarise the main elements of the proposed Regulation.

The meaning of resettlement

4.24 Resettlement is the process for admitting third country nationals or stateless people who have been displaced within their country of nationality or habitual residence or to a third country and are in need of international protection. The purpose of resettlement is to ensure that individuals who qualify for international protection are able to gain safe and legal access to a Member State in which their protection needs can be met.

210 See Hansard, dated 7 September 2015 and the Government's guidance to local authorities on the *Syrian Vulnerable Person Resettlement Programme* published in October 2015.

211 See the then Immigration Minister's Written Ministerial Statement of 21 April 2016.

212 Section 67 of the Immigration Act 2016 requires the Government to "make arrangements to relocate to the United Kingdom and support a specified number of unaccompanied refugee children from other countries in Europe". The number of children to be resettled is to be determined in consultation with local authorities.

213 See the press release issued by the Prime Minister's office on 4 May 2016.

214 The term "asylum" and "international protection" are used interchangeably in this chapter. They encompass claims which result in the conferral of refugee status under the UN Refugee Convention and other forms of subsidiary protection which are not a direct result of individual persecution but where an individual would be at risk of "serious harm" (including from armed conflict) if returned to his or her country of origin

215 See the Commission's press release of 13 July 2016 on the proposed Regulation.

Eligibility for resettlement

4.25 The proposed Regulation sets out the criteria for determining whether an individual is eligible for resettlement. To qualify for resettlement, an individual must not only meet the criteria but also fall within the scope of a targeted EU resettlement scheme specifying the regions or third countries from which resettlement is to take place and those to whom it will apply. In its accompanying commentary, the Commission makes clear that meeting the eligibility criteria does not create a free-standing right to be admitted to the territory of a Member State.[216]

4.26 Eligibility for resettlement encompasses third country nationals and stateless people who:

- have left their own country or been displaced within it because of a well-founded fear of persecution or a substantial and real risk of suffering serious harm;
- are considered to be vulnerable by virtue of their gender or age (women and children), their medical needs or disabilities, their socio-economic position, or because they have particular legal or physical protection needs (for example, survivors of violence or torture); or
- are close family members of EU citizens or third country nationals who are legally resident in an EU Member State.

4.27 The Commission notes that the inclusion of individuals whose vulnerability stems from their socio-economic position or who have family members already legally resident within an EU Member State "widens the classical resettlement categories" used by the UN Refugee Agency but is in keeping with the standard operating procedures developed for the resettlement of displaced Syrians from Turkey under the EU-Turkey agreement reached in March.[217]

4.28 Third country nationals or stateless people who meet the eligibility criteria are nevertheless excluded from participating in a targeted EU resettlement scheme if they fall within any of the exclusion grounds specified in the proposed Regulation. The exclusion grounds encompass:

- serious criminal behaviour (including incitement);
- security threats—individuals presenting a danger to "the community, public policy, security, public health or international relations" of a Member State;
- the existence of an "alert" in the Schengen Information System indicating that the individual concerned should be refused entry;
- evidence of previous irregular entry or stay (including attempted irregular entry) in the five years prior to resettlement; and
- previous resettlement to another EU Member State.

216 See p.10 of the Commission's explanatory memorandum accompanying the proposed Regulation.
217 See p.11 of the Commission's explanatory memorandum accompanying the proposed Regulation.

4.29 Exclusion also applies to individuals who have previously been refused resettlement by an EU Member State on any of these grounds in the preceding five year period. Mandatory exclusion on the grounds of serious criminal behaviour or a threat to public policy, security or health must be based on "reasonable grounds". However, the proposed Regulation gives Member States the option of excluding individuals on these grounds on the basis of *prima facie* evidence, in other words on the strength of supposition rather than hard evidence.

Resettlement procedures

4.30 Two procedures are envisaged—an ordinary or an expedited procedure, each consisting of four stages: identification, registration, assessment, and decision. The proposed Regulation envisages that the Commission will decide which procedure should apply each time it establishes a targeted EU resettlement scheme. Both procedures only apply to individuals who have consented to being resettled and who do not subsequently withdraw their consent, for example by refusing to be resettled to a particular Member State.

The ordinary procedure

4.31 According to the Commission, the ordinary procedure builds on existing resettlement standards and practices followed by EU Member States which generally provide for the initial assessment of an individual's qualification for international protection to be carried out in the relevant third country, followed by the formal grant of refugee or subsidiary protection status by the Member State of resettlement. The ordinary procedure requires Member States to identify the individuals to whom they intend to apply the resettlement procedure, verify that they fall within the scope of a targeted EU resettlement scheme and assess whether they meet the eligibility criteria. Member States may act on the basis of a referral from the UN Refugee Agency, the proposed EU Agency for Asylum, other relevant international bodies, or on their own initiative.[218]

4.32 Once the relevant individuals have been identified, they must be registered—a process involving the collection of personal data, including fingerprints and a facial image—and a detailed assessment made of their eligibility for resettlement. The assessment must be based on documentary evidence which may include information obtained from a personal interview or provided by the UN Refugee Agency. Preference may be given to individuals with family or social or cultural links to the Member State of resettlement (with a view to facilitating integration), provided there is no discrimination, or to individuals who have particular protection needs or vulnerabilities.[219] Some elements of the assessment may be carried out by any one of the referring bodies, if so requested by the Member State of resettlement.

4.33 The ordinary resettlement procedure should be completed within eight months of the date of registration but can be extended by a further four months if the assessment of eligibility involves complex issues of fact or law. In the event of a positive decision, the

218 See Article 10 of the proposed Regulation and p.12 of the Commission's explanatory memorandum accompanying the proposed Regulation.

219 Article 10(1)(b) of the proposed Regulation precludes discrimination based on any ground and specifically lists sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

Member State of resettlement is required to grant refugee or subsidiary protection status (as appropriate) and offer to make all the arrangements necessary to facilitate departure from the third country concerned and effective integration on arrival in the host Member State. Once resettled in the host Member State, other elements of the EU's asylum rule book setting out the rights conferred on those granted international protection and discouraging secondary movements between Member States will apply.[220]

4.34 The proposed Regulation would give the Commission the power to adopt delegated acts adapting the ordinary procedure to take account of circumstances in the third country from which individuals are to be resettled, provided any changes made do not affect any of the essential elements of the procedure.

The expedited procedure

4.35 The expedited procedure is a shortened version of the ordinary procedure. The Commission envisages that it would apply "where there are specific humanitarian grounds or urgent legal or physical protection needs" warranting rapid admission.[221] Member States would be required to apply the same security checks as under the ordinary procedure but must take a decision on resettlement as soon as possible, and no later than four months from the date of registration. A two-month extension is possible for cases involving complex issues of fact or law. To meet these tighter deadlines, the assessment of international protection needs is limited to an examination of each individual's eligibility for subsidiary protection rather than the more extensive examination required to qualify for refugee status. As a consequence, individuals resettled under the expedited procedure may only be granted subsidiary protection status. They may, however, apply for full refugee status on arrival in the Member State of resettlement.

Implementing the EU resettlement framework

4.36 The proposed Regulation would authorise the Council to adopt (by means of an implementing act) an annual EU resettlement plan specifying the maximum total number of individuals to be resettled in the coming year, the Member States participating in the EU resettlement plan and the number of individuals they are willing to resettle, and overall geographical priorities. A number of factors must be taken into account in deciding the countries and regions which are to be given priority for resettlement. They include:

- the number of displaced individuals in need of international protection in specific countries or regions, as well as the possibility of their onward movement to the EU;
- complementarity with EU financial and technical assistance;
- the EU's overall relations with the third country or region from which resettlement will take place; and
- the degree of cooperation with the EU in developing effective asylum systems, reducing irregular crossings of the EU's external borders, assisting

220 See chapter 3 of this Report on the revision of EU rules on who qualifies for international protection and our earlier Report on proposed changes to the Dublin rules: Sixth Report HC 71-iv (2016–17), chapter 1 (15 June 2016).

221 See p.13 of the Commission's explanatory memorandum accompanying the proposed Regulation.

in the application of other EU asylum laws (for example, the first country of asylum and safe third country concepts), and concluding and implementing readmission agreements with the EU.

4.37 Once the Council has agreed an annual resettlement plan, the proposed Regulation would authorise the Commission to adopt (by means of implementing acts) one or more targeted EU resettlement schemes containing a detailed justification for each scheme, a "precise number" and description of the individuals to be resettled and their intended destination, the third countries or regions from which resettlement is to take place, and arrangements for cooperation amongst participating Member States and other agencies. The implementing act must also state whether the ordinary or expedited procedure is to apply as well as the date on which the scheme will take effect and its intended duration.

4.38 To facilitate operational cooperation, the draft Regulation would require Member States to appoint national contact points. The Commission anticipates that the proposed EU Agency for Asylum would also provide technical support and assistance, supplemented by the expertise of other stakeholders such as the International Organisation for Migration.

High-Level Resettlement Committee

4.39 The proposed Regulation provides for the creation of a consultative High-Level Resettlement Committee, chaired by the Commission and comprising representatives of the European Parliament, Council, Commission, the EU High Representative for Foreign and Security Policy, and Member States, to provide political guidance on the implementation of the EU resettlement framework. The proposed EU Agency for Asylum, the UN Refugee Agency and the International Organisation for Migration may also be invited to attend, as well as representatives of Iceland, Norway, Switzerland and Liechtenstein if they choose to associate themselves with the implementation of the annual EU resettlement plan.

EU funding for resettlement

4.40 Member States would receive a lump sum payment of €10,000 (£8,265) from the EU Asylum, Migration and Integration Fund for each individual resettled under the EU resettlement framework. The proposed Regulation would amend the 2014 Regulation establishing the Fund to make clear that resettlement based on national resettlement schemes (outside the EU framework) would no longer qualify for EU funding—the 2014 Regulation currently provides for a lump sum payment of €6,000 (£5,052)[222] for each individual resettled under a national scheme.

4.41 The Commission underlines "the important link" between the number of individuals resettled within the EU and the EU budget. It says that it will therefore publish its proposal for the annual EU resettlement plan at the same time as its proposal for the EU's draft annual budget. This would leave the Council two months in which to adopt an implementing act establishing the annual EU resettlement plan for the following year.[223]

222 € = £0.842.

223 See p.14 of the Commission's explanatory memorandum accompanying the proposed Regulation.

Legal base, choice of legal instrument and subsidiarity

4.42 The proposed Regulation is based on Article 78(2)(d) and (g) of the Treaty on the Functioning of the European Union (TFEU). Article 78 establishes the EU's competence to develop "a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of *non-refoulement*". Article 78(2)(d) authorises the EU to adopt measures establishing "common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status". Article 78(2)(g) provides for "partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection".

4.43 The Commission views the proposed Regulation as an integral part of the measures constituting the common European asylum system and an important tool in managing the inflows of third country nationals and stateless individuals by providing "legal pathways to international protection in partnership and cooperation with third countries".[224] It considers that some degree of harmonisation is necessary to:

- reduce divergences in national resettlement practices and procedures, mitigating the risk that individuals eligible for resettlement may refuse resettlement in one Member State in the hope that they may be resettled in a different Member State;
- increase the EU's influence in policy dialogues with third countries; and
- alleviate the pressure on third countries hosting a disproportionate number of displaced individuals and share responsibility for meeting their protection needs.

4.44 According to the Commission's First Vice-President (Frans Timmermans):

> "Ad hoc schemes have delivered some results so far, but the new procedures put on the table today mean that we will work with national governments at an early stage to increase and pool efforts and make this work better."[225]

4.45 The Commission underlines the synergies with other aspects of its asylum reform package. It notes, for example, that the new fairness mechanism which is a key feature of its proposed reform of the Dublin rules (the rules allocating responsibility for each application for international protection made within the EU to a single Member State) and which is intended to ensure a more equitable sharing of responsibility amongst Member States, will take into account the number of individuals resettled in each Member State. Changes proposed to the EU's asylum database—Eurodac—will enable Member States to store the personal data of resettled individuals in order to track (and deter) secondary movements between Member States.[226]

4.46 The Commission considers that the EU resettlement framework should take the form of a directly applicable Regulation "so as to achieve a degree of convergence for the resettlement procedure that corresponds to the degree of convergence for the asylum

224 See p.6 of the Commission's explanatory memorandum accompanying the proposed Regulation.
225 See the Commission's press release of 13 July 2016 on the proposed Regulation.
226 See pp.4–5 of the Commission's explanatory memorandum accompanying the proposed Regulation.

procedure".[227] Moreover, the Commission argues that a Regulation is the most appropriate instrument as the EU resettlement framework will depend for its implementation on the adoption of further implementing acts by the Council (the annual EU resettlement plan) and the Commission (targeted EU resettlement schemes).

The Minister's Explanatory Memorandum of 4 August 2016

4.47 The Minister expresses the Government's support for resettlement as a means of creating safe and legal routes to Europe for individuals in need of international protection, discouraging dangerous and illegal journeys, and supporting countries bearing the heaviest migratory pressures. He recognises that asylum policy is "transnational in nature" and that it is an area in which competence is shared between the EU and Member States and in which the EU may, "in principle", legitimately act. He nevertheless questions whether the EU has competence to act, observing:

> "The Government remains of the view that there is no explicit competence under the Treaties for the EU to act on resettlement."[228]

4.48 The Minister reiterates the Government's position that "resettlement schemes are best decided at national level", adding that the UK has its own established processes and will not therefore use the Standard Operating Procedures (SOPs) developed by the EU to implement its resettlement commitments under the agreement reached with Turkey in March. These SOPs also form the basis for the procedures set out in the proposed Regulation.[229]

4.49 Turning to the substance of the proposed Regulation, the Minister comments:

> "The Commission proposes to apply burden-sharing mechanisms to calculate the number of individuals to be resettled by each Member State under the Union Resettlement Framework. This mirrors the approach to burden-sharing contained in the Commission's proposed recast of the Dublin III Regulation and for the EU relocation schemes, which the UK opposes. The UK Government, in common with other Member States, (some of which are challenging the legality of Council Decisions on relocation in the Court of Justice of the European Union) is against the use of mandatory redistributive mechanisms in relation to relocation or resettlement schemes, instead supporting commitments made on a national, voluntary basis."[230]

4.50 The Minister notes that the definition of resettlement in the proposed Regulation differs from that used by the UK as it would apply to individuals in need of international protection who are displaced within their own country. He continues:

> "The UK only accepts individuals for resettlement where they have left their country of nationality. This aligns with the definition of a refugee under the 1951 Refugee Convention of the United Nations."[231]

227 See chapter 2 of this Report for details of the Commission's proposed reform of EU asylum procedures.
228 See para 12 of the Minister's Explanatory Memorandum.
229 See para 20 of the Minister's Explanatory Memorandum.
230 See para 22 of the Minister's Explanatory Memorandum.
231 See para 22 of the Minister's Explanatory Memorandum.

4.51 The eligibility criteria for resettlement set out in the proposed Regulation also differ from those used by the UK, which are based on UNHCR definitions of vulnerability. The Minister observes:

> "The inclusion of those with family links and socio-economic vulnerability as a vulnerability category significantly broadens the scope of the proposed scheme."[232]

4.52 The Minister "broadly agrees" with the grounds for exclusion from resettlement and supports the emphasis placed by the Commission on resettlement from third countries which demonstrate a willingness to cooperate with the EU in the area of asylum and migration, adding:

> "Resettlement should be used as part of a strategy to improve third countries' efforts to reduce irregular migration into the EU, to cooperate with the EU on returns of irregular migrants, to improve protection arrangements and to improve their own asylum systems."[233]

4.53 He also supports close cooperation with stakeholders to ensure that the EU resettlement scheme operates effectively, including "exploring synergies between an EU resettlement scheme and the resettlement schemes of other third countries, where this would create efficiencies and be in the best interests of individuals to be resettled".[234]

4.54 The Minister notes that the proposed use of the UN Refugee Agency to identify and refer individual cases for resettlement aligns with UK practices, but says that the proposed involvement of the EU Agency for Asylum in "proactively identifying cases for resettlement" would extend the current mandate of the European Asylum Support Office (which the Agency would replace). He notes also that the Commission's proposal for a new recast Eurodac Regulation would include provision for the personal data of resettled individuals to be stored in the database, even though they have not lodged an application for international protection in the Member State of resettlement. He continues:

> "This raises the question as to whether the scope of future amendment to the EURODAC III proposal should also include individuals admitted for resettlement under separate, national schemes for a consistent approach towards individuals admitted under resettlement. The Government is in principle supportive of such an approach."[235]

The UK's Title V opt-in decision

4.55 The Minister sets out the Government's position on the outcome of the referendum on UK membership of the EU in familiar terms:

> "On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all

232 See para 22 of the Minister's Explanatory Memorandum.
233 See para 22 of the Minister's Explanatory Memorandum.
234 See para 22 of the Minister's Explanatory Memorandum.
235 Details of the proposed recast Eurodac Regulation and the proposed Regulation establishing the EU Agency for Asylum can be found in our Sixth Report HC 71-iv (2016–17), chapter 2 (15 June 2016) and our Seventh Report HC 71-v (2016–17), chapter 1 (6 July 2016).

> the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation."[236]

4.56 He confirms that the UK's Title V (justice and home affairs) opt-in applies to the proposed Regulation and that the three-month deadline for notifying the UK's opt-in decision is expected to expire on 4 December (time starts to run from the date on which the last language version is published). The Minister sets out the factors which will help to inform the Government's opt-in decision, adding that "the Government is committed to taking all opt-in decisions on a case-by-case basis, putting the national interest at the heart of the decision making process". The main factors are:

- "the extent and likelihood to which we think the proposal could be improved and whether any unacceptable elements could be removed during negotiations, if we do opt in;
- "the implications of not opting in for our broader relationship with the EU and its institutions, and with other Member States bilaterally—in particular for our ability to promote our own agenda in EU fora and to secure co-operation and support from other Member States on immigration and wider areas of Justice and Home Affairs;
- "how the proposed Union Resettlement Framework relates to the two packages of proposed measures that will reform the Common European Asylum System; and
- "the result of the referendum on the UK's relationship with the EU and negotiations on the UK's exit from the EU."[237]

UK resettlement schemes

4.57 The Minister describes the resettlement schemes currently operated by the UK to bring individuals in need of international protection directly to the UK.

> "In July 2015, the UK Government agreed that persons resettled through our existing resettlement programmes would contribute towards the EU resettlement numbers. Under the Syrian Vulnerable Person's Resettlement Scheme, we have resettled 1,854 of the most vulnerable Syrians from countries such as Turkey, Lebanon and Jordan and are on track to resettle 20,000 by the end of the current Parliament. In April, the Government announced that it would work with the UNHCR to resettle vulnerable children from the Middle East and North Africa (MENA) region. Under this scheme, the UK will resettle several hundred individuals in the first year with a view to resettling up to 3,000 individuals over the lifetime of this Parliament. The majority of these will be children, who will be resettled with their family members or carers where appropriate. These programmes are in addition to our long-running Gateway resettlement scheme, which has resettled 6,600 individuals since 2004.

236 See para 13 of the Minister's Explanatory Memorandum.
237 See para 16 of the Minister's Explanatory Memorandum.

> "In May this year the Government also committed to transfer unaccompanied refugee children in Europe to the UK. This is reflected in the Immigration Act 2016. Over 20 children who meet the criteria in the Act have been accepted for transfer to the UK since it received Royal Assent in May, the majority of whom have arrived in the UK. We are in active discussions with the UNHCR, UNICEF, NGOs and the French, Italian, and Greek governments to strengthen and speed up mechanisms to identify, assess and transfer children in Europe who meet the criteria to the UK, where this is in their best interests. As is required by the Immigration Act, we are working closely with local authorities in the UK to establish their capacity to host more unaccompanied children. The UK will transfer children who were already registered in Europe before the EU-Turkey deal came into force on 20 March. As such, we avoid creating a policy that places children at additional risk or encourages them to place their lives in the hands of the people traffickers and criminal gangs. The Government has been clear that we do not want to be part of an EU relocation scheme for asylum seekers. This scheme is limited to unaccompanied refugee children and is being implemented through bilateral discussion with Member States. We remain of the view that relocation schemes within Europe risk creating unintended consequences or perverse incentives for people to put their lives into the hands of traffickers."[238]

Timetable for negotiations

4.58 Following a "high-level presentation" of the proposed Regulation to the Council in July and a short exchange of views, detailed negotiations are expected to begin in September. The Minister considers than an agreement is unlikely to be reached this year.

Previous Committee Reports

None on this document, but see our earlier Reports on Commission Recommendations on a European resettlement scheme and on a voluntary humanitarian admission scheme with Turkey: Second Report HC 342-ii (2015–16), chapter 6 (21 July 2015), Sixteenth Report HC 342-xv (2015–16), chapter 10 (6 January 2016), Twenty-fourth Report HC 342-xxiii (2015-16), chapter 9 (24 February 2016), Twenty-fifth Report HC 342-xxiv (2015–16), chapter 25 (9 March 2016) and Third Report HC 71-ii (2016–17), chapter 25 (25 May 2016).

Annex: Submission from the International Rescue Committee UK

Executive Summary

The International Rescue Committee (IRC) welcomes the opportunity from the House of Commons European Scrutiny Committee to submit our views on the European Union's (EU) proposed establishment of the Union Resettlement Framework. This proposal will be an indication of Europe's response to the global refugee crisis and it will hopefully reaffirm Europe's commitment to provide humane, comprehensive and long-lasting solutions for the world's most in need; asylum seekers and refugees fleeing violence,

238 See paras 17–18 of the Minister's Explanatory Memorandum.

conflict and persecution. This proposal is currently being presented by the Commission to the European Parliament and Council; the United Kingdom (UK) will have to decide whether to opt-in or out of the Framework. This submission sets out the IRC's views on the aforementioned EU proposal and our proposed amendments.

Section I—The International Rescue Committee

The IRC is one of the only non-governmental organisations (NGO) in the world that is simultaneously, a humanitarian aid organisation and a resettlement agency, covering the entire arc of displacement. In 2015, we assisted over 23 million people.

We work in some 40 conflict-affected and fragile countries around the world to deliver life-saving assistance to people affected by war and disaster, and remain working with communities to assist with rebuilding through the post-crisis phase. The IRC works in Greece and Serbia providing humanitarian aid to refugees. Our office in Germany provides technical assistance on refugee integration. The IRC is one of the largest of the nine resettlement agencies in the U.S. We assist with resettlement and support permanent integration of the most vulnerable refugees across 29 cities. We have resettled more than 370,000 people from 119 countries into the U.S. over the past four decades.

Section II—The Union Resettlement Framework

There are currently over 65 million people displaced from their homes, including 21.3 million refugees—this refugee crisis is not only a European one, it is global in scale.

This is now the new normal. Large numbers of people are displaced for longer than ever before, and conflicts are growing in size and complexity by the week. The EU should use resettlement as a global tool to offer safety to its fair and achievable share of the 1.19 million refugees in need, and with no other durable solution. Refugee resettlement is not an alternative to rights to asylum, and it must be additional to other pathways to protection, such as humanitarian visas, medical evacuation programmes, private sponsorship and/or family reunification. But it offers an element of structure because the arrivals are planned, it enables more responsibility-sharing with those countries already hosting more than their fair of refugees, and refugees do not need to risk their lives attempting to cross the Mediterranean Sea. It also enhances the prospect of successful integration into Europe.

In the past, EU resettlement has consisted only of a handful of national resettlement programmes and now 14 EU Member States[239] have committed to resettlement in some form. Across these schemes, there is little coordination and programmes vary widely. In 2014, the EU only resettled just under 9,000[240] refugees under the Joint EU Resettlement Programmes.

The IRC believes that the proposal to establish a robust and permanent EU resettlement framework is a missing piece in the EU's response to the global crisis that is facing the world today. The time is now for EU decision-makers, including the UK, to step up to their responsibility by proactively and constructively negotiating the Union Resettlement Framework, with the aim of swift adoption. This would mark the first EU-wide scheme

239 The European Resettlement Network, Introduction to Resettlement in Europe, 2016, http://www.resettlement.eu/page/introduction-resettlement-europe

240 Human Rights Watch, Dispatches: The EU, Migration, and Learning to Share, 21 July 2015, https://www.hrw.org/news/2015/07/21/dispatches-eu-migration-and-learning-share

for the legal and safe entry of refugees into the region. The scheme should be permanent with robust annual targets that would make a concrete impact in providing a long-lasting sanctuary to the refugees most in need of resettlement.

The IRC asks the EU to resettle a minimum of 108,000 refugees a year over five years. This would add up to 540,000 refugees.[241] This would be the EU's fair and achievable share of the global responsibility.

Consequently, the IRC welcomes the European Commission's proposal of a permanent resettlement framework which would define a single procedure for resettlement across the EU. In particular, IRC welcomes the establishment of an expedited procedure within the Commission proposal. This expedited procedure should provide the opportunity to fast-track the most vulnerable refugees in need of urgent resettlement.

Drawing on IRC's four decades of experience of resettling and supporting the integration of refugees in the U.S., and our experience of providing life-saving assistance to people in need in over 40 countries—including in Europe. We recommend the following amendments to Union Resettlement Framework:

i) Resettlement should be provided where the needs of those displaced are the greatest, and not made conditional on the government of the country that hosts them cooperating in other areas of policy. Vulnerable refugees should not pay for the political relationship between a third country and the EU;

ii) Guarantee the UN Refugee Agency (UNHCR), the International Organisation for Migration (IOM) and civil society organisations seats on the high-level resettlement committee, to ensure their knowledge on global needs and expertise on implementation is taken into account in the establishment of the annual scheme;

iii) The EU yearly target of the number of refugees to be resettled should be decided in conjunction with the European Parliament (through delegated acts). This target should be ambitious and reflect the levels of refugees in need of resettlement set out by UNHCR each year as well as the integrative capacity of each Member State;

iv) Permanent legal status should be afforded to resettled refugees and should not be dependent on skills or knowledge acquired;

v) EU teams consisting of Member State experts and coordinated and led by the European Asylum Support Office (EASO), should be deployed to third countries where refugees have sought initial refuge. From these areas, the EU teams, with the support of UNHCR, IOM and civil society organisations, can process applications for resettlement;

vi) To ensure the quick and efficient processing of applications for resettlement, an 'operational framework' should be created that allows for a fast-track

241 These figures were calculated by taking into account the population and GDP of each EU Member State. The International Rescue Committee, Pathways to Protection, March 2016, http://rescue-uk.org/sites/default/files/uploads/Pathways%20to%20protection%20-%20IRC_0.pdf

system for the most vulnerable and the most straight-forward cases, with a second stream, staffed by the most experienced EU officials, to handle cases that need more time and consideration;

vii) Pre-departure and pre-arrival cultural orientation programmes must be mandatory for each resettled refugee;

viii) Should an EU Member State decline resettlement of a refugee, the Union Resettlement Framework must allow for another EU Member State to consider resettlement of that refugee.

Section III—The UK and the Union Resettlement Framework

A permanent EU resettlement framework would allow the EU to display the same global humanitarian leadership, and shared responsibility and values it did when developing the fundamental 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. The IRC believes that the UK should opt-in to this. This legislation has the opportunity to shape the EU's response to the global refugee crisis and the needs of refugees today for the long-term.

If the UK Government decides not to participate in the Union Resettlement Framework, the IRC considers that the UK Government should expand its current state resettlement programmes. Nationally, the UK should resettle 15,608 refugees a year over five years. This would be just 24 refugees per year per parliamentary constituency—17 more people than the UK is already resettling by the end of this Parliament.

Resettlement is only one part of a comprehensive solution to the global refugee crisis. Therefore, the UK—and all EU Member States—must uphold their obligation to allow access to asylum for spontaneous arrivals at the borders and shores, continue to address the dire and urgent humanitarian needs worldwide through life-saving assistance, and complement resettlement with other tools that would enable safe entry into the UK for asylum seekers and refugees.

These other pathways to protection that the UK should utilise include family reunification, private sponsorship, humanitarian visas, and/or medical evacuation programmes.

Every person has the right to be reunited with their family, to help restore their dignity and to increase the potential of successful integration. Hence, the UK should proactively help refugees who have been separated from their loved ones reunite with them in the UK. The tool of family reunion should be made more flexible, humane and quicker, in order to allow refugees to be reunited with their family. The rules on family reunion should also be expanded by broadening the definition of family to include children over 18, enabling unaccompanied and/or separated refugee children to reunite with family in the UK, and widening the definition of family to include extended family members.

The UK's new Community Sponsorship Scheme launched in July is a positive step to include the UK's generous and dedicated community groups in the resettlement and integration of refugees.[242] The IRC believes that the UK Government should expand

242 UK Government, Community Sponsorship Scheme launched for refugees in the UK, 19 July 2016, https://www.gov.uk/government/news/community-sponsorship-scheme-launched-for-refugees-in-the-uk

this Scheme to establish a private sponsorship scheme, similar to the mechanism used in Canada, allowing for additional refugees to reach sanctuary in the UK through safe and legal routes.

Humanitarian visas—offered in third countries hosting refugees—would enable the asylum seeker to safely and in a documented fashion reach the state in which he or she will apply for asylum. Italy has a humanitarian corridor supported by civil society, which is a positive example of how humanitarian visas can be used. Medical evacuation programmes are already in use by some EU Member States and could be rolled out more widely to assist refugees with the most urgent medical cases.

Formal Minutes

Wednesday 14 September 2016

Members present:

Sir William Cash, in the Chair

Peter Grant	Mr Jacob Rees-Mogg
Kate Green	Graham Stringer
Kate Hoey	Kelly Tolhurst
Craig Mackinlay	

Draft Report, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 4.58 read and agreed to.

Resolved, That the Report be the Twelfth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

[Adjourned till Wednesday 12 October at 1.45pm.

Standing Order and membership

The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;

b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and

c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression "European Union document" covers —

i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;

ii) any document which is published for submission to the European Council, the Council or the European Central Bank;

iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;

iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;

v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;

vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee's powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House's Standing Orders, which are available at www.parliament.uk.

Current membership

Sir William Cash MP (Conservative, Stone) (Chair)

Geraint Davies MP (Labour/Cooperative, Swansea West)

Richard Drax MP (Conservative, South Dorset)

Peter Grant MP (Scottish National Party, Glenrothes)

Rt Hon Damian Green MP (Conservative, Ashford)

Kate Green MP (Labour, Stretford and Urmston)

Kate Hoey MP (Labour, Vauxhall)

Calum Kerr MP (Scottish National Party, Berwickshire, Roxburgh and Selkirk)

Stephen Kinnock MP (Labour, Aberavon)

Craig Mackinlay MP (Conservative, South Thanet)

Mr Jacob Rees-Mogg MP (Conservative, North East Somerset)

Alec Shelbrooke MP (Conservative, Elmet and Rothwell)
Graham Stringer MP (Labour, Blackley and Broughton)
Kelly Tolhurst MP (Conservative, Rochester and Strood)
Mr Andrew Turner MP (Conservative, Isle of Wight)
Heather Wheeler MP (Conservative, South Derbyshire)

The following members were also members of the Committee during the parliament:
Nia Griffith MP (Labour, Llanelli) and Kelvin Hopkins MP (Labour, Luton North)