

**MAC Call for Evidence: Family migration visa financial requirements: responding on behalf of a group, organisation or government entity**

**Brexit Couples Submission**

**December 2024**

**(Numbers refer to substantive questions in the Consultation)**

**6. Do you think there should be a minimum income/financial requirement to bring a partner or family member to the UK?**

- Don't know

**7. Why do you say that?**

The answer depends on what is proposed. We consider complete removal of financial requirements unlikely, but the current system is unfair. The UK's requirements are too high and are far more demanding than other countries' (Wray 2014; JHA 2023). A new, more flexible approach is necessary to avoid the profound negative impacts documented at even the previous £18,600 MIR. The current approach is undesirable because it:

- Does not meet its policy aims, providing a distorted assessment of the family's future financial trajectory;
- Is inflexible and excludes families unlikely to need public funds after admission;
- Discriminates, without adequate justification, against women and many minority groups;
- Leads to lengthy (sometimes permanent) separations and acute distress including to children, damaging family life.

Several reports have noted serious problems with the MIR (e.g. APPG on Migration 2013, Children's Commissioner for England 2015, House of Lords Justice and Home Affairs Committee 2023). Reunite Families UK's submission refers to their members' experiences. Our work as academics specialising in family migration demonstrates the weak case for and harm caused by the MIR, evidenced notably in the 'Kept Apart' project (Charsley & Wray 2023) and emerging findings of our Brexit Couples project ([www.brexitcouples.ac.uk](http://www.brexitcouples.ac.uk)) on the substantial population of UK-EU couples now affected by the MIR post-Brexit, who have been ignored in Impact Assessments and policy discourse.

If the MIR continues, increased flexibility is critical to reflect the diversity of family finances, reduce discrimination and harm. In particular, it lacks logic to exclude the non-UK partner's prospective earnings or third-party contributions in cash or kind (e.g. free/low-cost accommodation). The Adequate Maintenance (AM) test which applied to all partner applications until 2012 looked at the likely overall position of the family after admission. A version still applies to some partner applicants and elsewhere in the rules. We are not aware of evidence suggesting families where applicants have entered under AM are more likely to access additional public funds after entry. If the MIR cannot be met by the sponsor's earnings alone (common when, for

example, there are caring responsibilities), an AM test should be an option for all applicants (not just those receiving specified benefits). It should include consideration of additional and post-entry resources and be treated as a mainstream application without need to show exceptional circumstances or enter the ten-year route. Such flexibility is also crucial for British citizens' returning from abroad - a particular issue for UK-EU couples who are often in relationships formed pre-Brexit.

#### **References:**

All-Party Parliamentary Group on Migration (June 2013) *Report of Inquiry into New Family Migration Rules*

Charsley, K., H. Wray, (2023) Kept apart: Routine family separation in the UK family immigration system... *Migration Studies*

Children's Commissioner for England (August 2015) *Family Friendly? The impact on children of the Family Migration Rules...*

Wray, H., Agoston, A. and Hutton, J. (2014) A family resemblance? The regulation of marriage migration in Europe. *European Journal of Migration and Law*

House of Lords Justice and Home Affairs Committee (JHA) (2023) *All Families Matter: an inquiry into family migration*

#### **8. Do you think the current MIR level of £29,000 on the Family Immigration route is...**

- Much too high

#### **9. Why do you say that?**

Problems caused by the MIR have been widely evidenced (Qs7, 11, 13). Increasing incomes since 2012 gradually mitigated the impact of the £18,600 MIR particularly on those able to work full-time. That process was reversed by the recent increase. The Migration Observatory (2024) estimates that around 50% of employees earn below £29,000, comparable to the proportion excluded when the £18,600 MIR was introduced. Higher proportions of non-employees such as the self-employed, retired or students, are likely to have incomes lower than £29,000.

The increase to £29,000 does not seem to be based on an assessment of relevant issues. The original justification - that the MIR should match skilled worker income requirements - confused the family rights of British citizens and residents with recruitment of skilled work migrants. There is no evidence it will meet its current policy aims (Q10). Even if it were shown to reduce risks of future reliance on public funds, there has been no consideration of other factors, including the non-economic benefits of family reunification, and the negative impacts of preventing couples and families from living together in the UK. It ignores potential contributions of non-UK partners, creates enforced single parenthood, deprives families of co-parents, carers and earners, and separates children from parents. The lack of flexibility (discussed below Q11) exacerbates these still further.

The previous discriminatory impact of the MIR has been increased as disparities between the income of different groups become more significant. The recently published Equality Impact Assessment (EIA) acknowledges indirect discrimination along several protected characteristics (gender, age, race and religion), but is misleading and inadequate. It suggests government investment in education will reduce inequalities, failing to address the current position of sponsors and ignoring the long-term impact of labour market discrimination. Key omissions include failure to recognise the enduring impact of maternity on women's employment and income, and the significant drop in income of pensioners. Reference to likely higher savings amongst older people ignores the fact these are likely to be in pensions and longer-term investments, rather than the cash required for the alternative savings route.

The EIA says that those unable to meet the MIR may be granted leave under exceptional circumstances provisions, designed to meet the government's obligations under article 8 ECHR. However, these routes provide inadequate mitigation. As the name suggests, they are designed to address 'exceptional' situations and the threshold to meet them is high. In the Impact Assessment on the wider 2024 changes, the working assumption was that no out of country applications on these routes would succeed (para 162). Successful applicants must wait ten years instead of five for settlement and make repeated costly applications (fee waivers are difficult to obtain). Our experience is that, without legal advice, initial refusals are common, and many applicants with a good case lack the resources or resilience to pursue an appeal. Rather than facilitate family life, the exceptional circumstances route therefore prolongs stress and separation and fails to address issues of discrimination.

#### **References:**

Migration Observatory (2024)

<https://migrationobservatory.ox.ac.uk/resources/commentaries/family-fortunes-the-uks-new-income-requirement-for-partner-visas/>

Impact Assessment:

<https://assets.publishing.service.gov.uk/media/66f13f5b554440e6da17e24f/Annex+D+-+IA0490+-+Spring+Immigration+Rules+2024+IA+-+May+2024.pdf>

#### **10. In your opinion, do the MIR and AM meet these policy aims?**

No. Assessment of the MIR's compatibility with Article 8 is likely to focus on economic benefits through avoiding burdens on taxpayers, particularly reliance on public funds - the central justification for the original MIR approved by the Supreme Court and, in general terms, ECtHR. Other policy objectives outlined here and in original policy statements are imprecisely formulated - we do not consider them further here.

Fiscal benefits of the MIR are unproven. Expert evidence to the JHA was that, while data is lacking, the impact of family migration on public finances is minor (para 169). Analysis of the Impact Assessment for the original MIR revealed that, despite its headline conclusions, the taxpayer burden was unlikely to decrease and might increase (Wray 2017). There has not yet been similar analysis of the Impact Assessment for the new MIR, but its central flaw remains: the sponsor's earnings immediately before entry are an unreliable indicator of the family's future financial position and fiscal contribution.

There are several unforeseen economic consequences:

- Enforced single parenthood creating poverty, dependence on benefits, and a 'Catch 22' for UK parents unable to earn the MIR without a co-parent to share care.
- Families in the UK cannot benefit from the care, education and/or earnings of non-UK partners even when they are highly skilled.
- Those in early career positions or higher education where current income does not reflect earning potential may abandon studies or careers to meet the MIR, decreasing long-term economic contribution. Others sell property or long-term investments to meet the savings route, compromising future financial security.
- Some people leave the UK, or abandon plans to return. This means the loss of workers in key but modestly paid sectors such as health or education, and of unpaid care for aging parents.
- Well documented long-term stress, and mental/physical ill-health, with economic impacts.

The Impact Assessments ignore a new population affected by the MIR since the end of EU Free Movement and reduced eligibility for the EUSS. UK-EU relationships are common: 4% of couples in the UK have one UK-born and one EU-born partner. Our research shows applications from EU partners are increasing every year. The existing UK-EU couple population in the UK have high levels of education, employment and managerial employment (Labour Force Survey analysis). Our research suggests many such couples leave or remain outside the UK due to the MIR.

There is little evidence of the fiscal impact of the previous AM test. It was questioned in the 2011 Family Migration Consultation but, without more data, claims are difficult to evaluate. However, its flexibility meant it was more effective than the MIR in enabling family life and therefore, given the problems of the MIR, represented a fairer balance between the current policy aims of Article 8 compliance and economic wellbeing.

#### **Additional References:**

Equality Impact Assessment <https://www.gov.uk/government/publications/changes-to-immigration-rules-impact-assessments/2024-spring-immigration-rules-impact-assessment-accessible>

Wray, H. (2017) 'The *MM* Case and the Public Interest: How did the Government make its Case?' *Journal of Immigration Asylum and Nationality Law*

Home Office (2011) <https://www.gov.uk/government/consultations/family-migration-consultation>

#### **11. Do you have any comments about how the MIR and/or AM test work in practice (for example any unintended consequences)?**

The MIR lacks flexibility in multiple ways - we mention only a few here, drawing on 'Brexit Couples' and 'Kept Apart' project findings to supplement the issues identified above. Some consequences arise from the interaction of the MIR with evidential requirements, other Immigration Rules, or factors such as fees. Although the policy is aimed at adults, an unknown

but considerable number of children are affected: the Children's Commissioner estimated 15,000 in 2015.

Unless applicants have unearned income (e.g. pension), already work legally in the UK or couples have substantial savings, the key factor is the sponsor's income. Third party support or the applicant's prospective earnings (however substantial) are considered only under the problematic exceptional circumstances route. The sponsor's income must have been earned for at least six months, often longer, and must be evidenced in multiple highly prescriptive ways. Sponsors returning to the UK often cannot meet the conditions in advance so must either remain abroad or face months of separation. Sponsors who are primary carers for children are particularly disadvantaged.

Such obstacles to meeting the MIR result, at best, in a prolonged and difficult route for these families, and often in refusal or exclusion (despite no demonstrable public benefit). The cost of applications (over £11,000 for five-year route; £18,000 for ten-year route) combined with difficulties meeting the MIR mean many couples never apply. In consequence, an unknown number of families never live in and contribute to British society, British citizen children grow up unfamiliar with British life, and British sponsors feel alienation from the UK.

As well as the economic consequences discussed earlier, mental distress is severe, has been well documented, including in our *Brexit Couples* interviews, and can have long term consequences. Couples have reported feeling unable to start a family, undertake further education or change career due to the pressures of meeting the MIR. Some sponsors work excessive hours to reach the MIR (one reported 70 hours/week), and suffer social isolation, missing their partner and finding that friends and family do not understand their predicament.

After decades of free movement, large numbers of British citizens live with EU partners and families in the EU - they must also now meet the MIR to return to the UK (e.g. to care for elderly relatives). Many cannot, and few anticipated this consequence of Brexit.

The cost and complexity of applications can lead to immigration irregularity. EU/EEA nationals, in particular, can visit the UK visa-free but cannot lawfully make a life here. We have found some try to continue their relationship via extended visits but are confused or ignorant of the new limits on their stay. Once they understand their position, they may remain without authorisation conscious that, if they leave, they risk being refused re-entry. The very narrow basis for accepting late EUSS applications means that disadvantaged applicants, including from Roma communities, can have lived in the UK with their partner for many years but cannot access the EUSS or family migration system - with potentially severe consequences.

**12. Plans under the previous government were to increase the MIR further, firstly to £34,500 and then again to £38,700 by early 2025. For each of these increases, do you think they would be...**

Much too high (both)

**13. If you have any further comments on your answer to question 12, please write here**

Any increase to the MIR will exacerbate the negative impacts outlined above. An MIR of £38,700 would exclude about 70% of UK employees from sponsorship (Migration Observatory 2024). In

practice, because most couples seeking family reunification are relatively young, that percentage may be even higher. Even before the increase to £29,000, the UK had one of the most restrictive family migration regimes in the world. Further increases would make the UK a distant outlier. We are unaware of any other OECD country which subjects their own citizens to such severe restrictions. States governed by the EU Family Reunification Directive can require long term resident sponsors to show 'stable and regular resources' that permit the family's maintenance 'without recourse to social assistance' (Art 7(1)(c)) and, in practice, apply the same or a more generous criterion to citizen sponsors (Wray 2014). The European Court of Justice found a Dutch policy of requiring an income equivalent to 120% of the minimum wage breached this requirement (*Chakroun*). The Netherlands returned to the equivalent to the minimum wage while Canada does not have a minimum income requirement for the admission of spouses, and even Norway, where average wages are higher than in the UK, requires only around £24,000 per year (JHA 2023).

Migration Observatory (2024) analysis shows that discriminatory impacts would increase as the MIR increases but the composition of those affected would change. For example, 43% of the population of Black/African/Caribbean heritage can meet £29,000, compared to 35% of those of Pakistani ethnicity. However, only 22% of Black/African/Caribbeans could qualify at £38,700 compared to 23% of Pakistani ethnicity. Whilst the EIA argues that income rises with age, in the 50–54 age bracket only 35% could meet £38,700 (compared to 53% at £29,000). Regional income disparities and the gender pay gap would also mean a harsher effect on some groups.

The range of employment sectors where most workers would be ineligible would also widen as the level increases. These include some vital professions, including teachers, care workers, nurses and other health practitioners as well as many self-employed or creative workers. This can only lower morale in those affected and lead to the loss of skills and expertise as workers either switch jobs to earn the MIR, or leave the UK.

At higher MIR thresholds, more applications under exceptional circumstances and human rights appeals are probable, increasing Home Office and judicial workload. Lengthening backlogs and waiting times for these processes, already substantial, would further extend family separation. The lack of objective justification for a very high MIR increases the likelihood of successful human rights appeals. The family reunification system would become increasingly stratified. More applicants would enter the 10-year route to settlement (being ineligible for the 5 year route), becoming subject to multiple fees, prolonged immigration insecurity and increased likelihood of overstaying if repeated expensive renewal applications are unaffordable. It is also likely that an increased number of couples, despite relatively high earnings, never apply at all and either endure permanent separation or move abroad.