



Fforwm Cymdeithas Sifil Cymru ar Brexit

Wales Civil Society Forum on Brexit

Event Briefing

Cardiff University's Wales Governance Centre (WGC) and Wales Council for Voluntary Action (WCVA) funded by the Legal Education Foundation (LEF) have established the Wales Civil Society Forum on Brexit (the Forum). Its aim is to facilitate coordinated action and to connect Welsh Civil Society with experts to stimulate informed discussion on the implications of Brexit. On 15 May 2018 the project hosted its first event, attended by over 20 civil society organisations, to gauge the community's main Brexit related concerns. The event was organisation led, held under Chatham House rules, and saw briefing interventions by Dr Jo Hunt from Cardiff University on Brexit and Devolution and Dr Simon Hoffman from Swansea University on Human Rights.

The forum asked what Brexit related challenges organisations were experiencing or foresaw and what opportunities they felt Brexit presented. Through both discussion at the event and post event feedback, the delegates highlighted four themes where Brexit is and is foreseen to have an impact:

- Environmental and Animal Welfare Rights.
- Social Cohesion, Equality and Human Rights.
- Third Sector Funding and Research.
- Immigration Policy and Migrant Rights.

This briefing provides a summary of the first Forum meeting and subsequent conversations, as well as a brief update to stimulate discussion at the next Forum gathering on the 24th of July. There is also an overarching "next steps" section at the end.

I - Environmental and Animal Welfare Rights

Forum Discussion:

Forum members were largely in agreement that Brexit represents an opportunity to raise environmental and animal welfare standards in the UK. It was felt that the current system of CAP payments could be replaced by a more regionally attuned system that would support and reward higher standards. It was also acknowledged however that Brexit poses several potential challenges, particularly in terms of environmental principles, governance, loss of access to European bodies like the European Chemicals Agency (ECHA) and the European Centre for the Validation for Alternative Methods (ECVAM) and to the TRACES system which could create delays at the border impacting on animal welfare. Delegates were concerned that key pieces of Welsh legislation were designed with the backdrop of EU Law in mind, and that the loss of key EU principles would deprive these instruments of their substance. Concern was also expressed around the issue of a new environmental governance

body and the uncertainty over whether Wales would have a specific institution, or whether it would join up to a central UK one. In the event of the latter, it was pointed out that any such institution would need to be equipped to cater to differences in devolved environmental law and policy. If the former is ultimately chosen, there are fears that these duties would be handed to pre-existing bodies like the Natural Resources Wales (NRW), or the Future Generations Commissioner (FGC), both of which may see their original missions compromised.

Update:

The UK Government was initially resistant to the inclusion of environmental principles in the Withdrawal Bill. However largely due to third sector lobbying, the Withdrawal Act now provides that a bill consisting of “a set of environmental principles” must be published within six months of the date of the Act. It goes on to specify in section 16(2) that this must include the precautionary, polluter pays and prevention principles. This will be the Environmental Principles and Governance Bill that the UK government is still consulting on (until the 2nd of August). As this bill applies to England only, Wales has planned similar devolved provisions in the now essentially defunct Welsh Continuity legislation. Meanwhile the Welsh Government has stated that it will take the “first proper” opportunity to legislate for these.

This upcoming piece of UK environmental legislation has also sparked a discussion between the National Assembly and Welsh Government as to whether this bill might violate the intergovernmental agreement (IGA). Mick Antoniw, chair of the Constitutional and Legislative Affairs Committee has suggested that this might be the case as the IGA commits the UK government to not bring forward legislation that would affect the 24+ policy areas concerned (environmental affairs feature prominently in this list). Drakeford has since stated that this is not the case because not only a portion of these policy areas will be subject to the Withdrawal Act’s section 12 regulations. Under the terms of the IGA, the UK Government is only prevented from bringing forward legislation in areas which were both otherwise devolved and subject to a section 12 regulation. He therefore concludes that because he does not think the upcoming Environmental bill will be caught by the scope of any section 12 regulations, it will not violate the IGA. However, given the overarching role of the environmental principles that will be contained within this bill, there is likely to still be concern that it will intersect with areas affected by section 12 regulations.

Controversy also arose over the fact that the UK Government did not plan to enable the new governance body to bring legal proceedings, but this position was also ultimately reversed in the Withdrawal Act. The Third Sector has now shifted its concern in this area to the body’s ability to bring actions against local authorities. It remains unclear what these governance arrangements will be, especially regarding devolution. According to a recent [National Assembly Stakeholder event](#),¹ support in Wales would appear to be leaning towards a centralised body however because there is concern that any devolved arrangements will pose funding, timescale and capacity challenges.

Academic research in this area is more sceptical about the prospect of a “Greener Brexit”, particularly in the medium term.² It has been pointed out that the overall deregulatory tone of Brexit, immense pressure on the Parliament and external pressures from securing new free trade agreements all create

¹ See: <https://seneddresearch.blog/2018/06/27/environmental-governance-post-brexit-closing-the-governance-gap/>

² See for instance: R. Lee, “Always Keep a Hold of Nurse: British Environmental Law and Exit from the European Union”, 2017 Journal of European Law 29(1) p.156; See also: C.Hilson, “The Impact of Brexit on the Environment: Exploring the Dynamics of a Complex Relationship”, 2018 Transnational Environmental Law 7(1), p.95

risks that standards may stagnate or regress. There are also concerns that the loss of the EU's system of remedies and hard enforcement will feed into the potential governance gap, particularly as residual international agreements like the European Convention on Human Rights (ECHR) and Aarhus Convention provide for much weaker remedies.

II – Social Cohesion, Equality and Human Rights

Forum Discussion:

Perhaps the leading theme discussed at forum was the impact of the spike in racism, hate crime and discrimination. Academic research has established that certain “trigger events” can lead to a rise in radical views and various statistics have corroborated that the Brexit referendum has acted in this way. It was pointed out that the UN's special rapporteur on racism and xenophobia has also stated that Brexit had led to an increase in acceptance of these views in the UK.

Discussions at the forum reflected frontline experience of this issue. Organisations working in the field of children and young people explained that they are seeing a [significant increase in incidents of racist bullying in schools and that teaching staff were not sufficiently equipped to manage the trend](#).³ It was also pointed out that governance structures are not adapted to this rise, as ESTYN was not scrutinising schools on bullying specifically rooted in racism and that this reflected a gap in the public-sector equality duty. Overall the forum agreed that this shift in cultural perceptions, which is salient in both south and north Wales, was having a generally negative effect on young people's social attitudes.

Rises in intolerance towards disabled individuals and migrant communities were also reported and this is increasing the vulnerability of already at-risk communities. Hate crimes against disabled individuals rose by 53% in 2016-2017 when compared to 2015-2016, the highest rise recorded across categories of hate crime⁴. This trend has translated into an increase in need for a variety of support and advocacy services, which in the context of increasing local authority outsourcing, is stretching the sector's already slim resources, and ultimately having a negative impact on the rights and wellbeing of vulnerable individuals. The forum highlighted the need to curb this trend through education on human rights, equality, diversity and the historic significance of ethnic minorities, as well as through continued participation in programmes that foster social cohesion like Erasmus+. It was also highlighted that the UK must seek continued participation in European networks for the safeguarding of children and the prevention of trafficking and exploitation. There was general agreement that these concerns have not been sufficiently reflected in Brexit policy debates to date.

Update:

The final text of the Withdrawal Act was more disappointing on this front when contrasted with changes secured on environmental concerns. The Charter of Fundamental Rights was excluded and the right to challenge domestic laws using the general principles of EU law was limited to three years after Exit Day.

Academics are largely in agreement that contrary to the UK Government's “right by right analysis” of the Charter, excluding it from domestic law could result in a weakening of equality and human rights in the UK. This is because the Charter acts as a constitutional guarantee against the regression of rights and provides a stronger remedy by allowing offending domestic laws to be struck down rather than remain in force, as would be the case if they were declared incompatible with standard international

³ See for instance: <https://www.tes.com/news/increase-racism-schools-brexit>

⁴ Source: Home Office, “Hate Crime, England and Wales 2016 to 2017”, Available at: <https://www.gov.uk/government/statistics/hate-crime-england-and-wales-2016-to-2017>

treaties. Some policy areas have been highlighted as being particularly at risk, like gender equality, LGBT rights and workers rights (particularly those with part-time, fixed-term and agency contracts, many of whom belong to minority groups). It is also acknowledged that there will not be a sudden rush to lower protections of these rights, but the risk comes from long term divergence with EU standards, the lack of a constitutional body of rights framing future developments, difficulties implementing improvements owing to the lack of parliamentary time, less available remedies (like the loss of the preliminary reference procedure) and the possibility that interest in human rights may wane. This last point is particularly salient given the UK government's past rhetoric about repealing the Human Rights Act 1998 and leaving the ECHR. [Research by Counterpoint, Equally Ours and the Public Interest Research Centre \(PIRC\)](#) has found that perceptions of human rights in media and political discourses in Wales are significantly more positive than in England, Scotland, Northern Ireland or the UK generally. While the research found that 80% of discourse in England portrayed human rights negatively, while less than 40% was negative in Wales.⁵ This is consistent with Wales' approach to higher human rights standards by using devolved legislation to voluntarily bind the Welsh Government to International Human Rights instruments. Despite this track record in a context of considerable change triggered by Brexit and the loss of the EU Charter it will be important to not take Human Rights for granted. Recent stakeholder discussions have highlighted a trend to switch from the language of Human Rights to the language of Wellbeing in the context of the Wellbeing of Future Generations (Wales) Act 2015. Stakeholder groups have been discussing the prospect of using Welsh legislation to have due regard to the EU Charter.

The upcoming Trade Bill also has Human Rights and Equality implications and the 24th of July forum will present an opportunity to explore these further. Finally, in connection with the rise in discrimination, Carwyn Jones, in his reply to the chairs of the ELGC and EAAL Committees (16th of May 2018), has noted that the Welsh Government is working with education professionals to update their *Respecting Others* anti-bullying guidance to provide better support to teachers in handling cases of hate related bullying.

III – Third Sector Funding and Research.

Forum Discussion:

Wales is more dependent on a variety of EU funding streams than any other region of the UK and so there was agreement among forum members that the sector is experiencing widespread anxiety on the future of third sector funding. Concern was expressed about the scale, nature and governance of any future replacement funds.

- In terms of governance, there was agreement that full devolution of the Shared Prosperity Fund was the preferred option because the Welsh Government and local partners like the WCVA, have the experience and relationships to be best placed to factor in local need and specificities.
- Concern was also expressed about the scale of future funds and quantifying how much the UK Government will provide, particularly if the Shared Prosperity Fund is managed centrally, as England has a history of underspending.
- Finally, participants noted that more discussion was needed on the nature of any future funding structures in terms of objectives and principles. Again, this raised concerns regarding devolution because there are significant differences in how Wales spends EU funds, where these tend to be

⁵ Public Interest Research Centre, Counterpoint, Equally Ours, "Building Bridges – Connecting with Values to Reframe and Build Support for Human Rights", figure 4 on page 19, Available at: <http://counterpoint.uk.com/wp-content/uploads/2016/06/Building-Bridges.pdf>

used for equality and social cohesion, whereas in England they tend to be used for DWP skills programmes.

Discussions on funding also highlighted concern surrounding the lack of intergovernmental dialogue taking place between the Welsh and UK Governments. Several participants highlighted that they had made extensive contributions to the Welsh Government's consultation on Regional Investment in Wales but highlighted that this information had not yet been used in discussions with the UK Government. This was accompanied by surprise that neither the Government's Industrial Strategy nor its framework analysis of policy areas where EU law intersects with devolved competence mentioned structural funds and regional investment.

Delegates also submitted concerns on the loss of research funding, research opportunities, and general barriers to research activity like the mobility of researchers post Brexit. It was pointed out that there is a high proportion of EU citizens working on UK based research projects who now face uncertainty about the future of their status and that this was a considerable source of anxiety for them. The field of medical research and the trial of drugs was highlighted as particularly dependent on access to the networks provided by the EU.

Update:

Recent discussions in the [National Assembly's Finance Committee](#)⁶ have highlighted that there is still little dialogue between the Welsh and UK Governments on the topic of structural funds, though there is an expectation that this may occur in the Autumn. Despite this the Welsh Government and National Assembly have been discussing the issue. The Cabinet secretaries for [Finance](#)⁷ and for [Energy, Planning and Rural Affairs](#)⁸ have produced evidence papers on Replacing EU Funding for Wales, and the Welsh European Funding Office has published the [results of the consultation](#)⁹. The findings reflect the sector's desire to simplify rules, criteria, monitoring, evaluation and to remove the artificial boundaries and inflexibility characteristic of the EU system. There was also support for a greater role to be given to regional partnerships and for strategic and investment decisions to be made in Wales rather than by the UK Government. In its position paper the Welsh Government has stated that it expects to have full control over the administration and strategic direction for successor funds and intends to design Wales specific arrangements. It intends to take on board the advice from its consultation and do things differently, particularly in terms of removing barriers and simplifying procedures. It also stated its intention to build successor arrangements around the Wellbeing of Future Generations Act. It is also seeking continued participation in ETC programmes, and EU centrally managed programmes like Horizon Europe, Erasmus+ and Creative Europe, though it noted that these are contingent on the UK Government's negotiations with the EU. The formal channels through which it was pushing these points with the UK Government were not made clear however and recent media coverage has highlighted an ongoing lack of devolved participation in the EU negotiations.

IV – Immigration Policy and Migrant Rights.

⁶ See point 171 onwards.

⁷ Available at: <http://senedd.assembly.wales/documents/s76806/FIN5-16-18%20P3%20Written%20evidence%20submitted%20by%20the%20Cabinet%20Secretary%20for%20Finance.pdf>

⁸ Available at: <http://senedd.assembly.wales/documents/s76804/FIN5-16-18%20P2%20Written%20evidence%20submitted%20by%20the%20Cabinet%20Secretary%20for%20Energy%20Planning%20and%20Rural%20A.pdf>

⁹ Available at: <https://gov.wales/docs/wefo/publications/180625-engagement-report-en.pdf>

Forum Discussion:

Forum participants acknowledged that rhetoric stirred up by Brexit is harming the wellbeing and rights of migrant communities and that the UK Government's hostile immigration policy is fuelling this trend. The general message was that Brexit has increased the vulnerability of these groups to abuse, both in terms of hate crime, discrimination and hostility and labour rights abuse. It was noted that there is a general lack of advocacy services to support individuals in need of legal advice and support which is being compounded by a massive spike in need and demand. The Labour Exploitation Advisory Group found that one third sector service saw a spike of 734% in requests for advice and support following the referendum. Participants also heard that services have noticed an increase in labour exploitation affecting EEA citizens and that misinformation on their rights was increasing. Delegates identified a need to combat this trend and to push for further legal protections for these communities. Concern was also raised that migrant communities risk being "blamed" and subject to increased hostility if the economic consequences of Brexit are felt as particularly negative.

Finally, participants raised concerns about maintaining a viable workforce post-Brexit, as some sectors, particularly in health and social care, are reliant on migrant workers to support some of society's most vulnerable individuals.

Update:

The recently passed Withdrawal Act says little about immigration, though both houses accepted the Government's amendment in lieu that it will seek to negotiate an agreement with the EU to allow unaccompanied children to join a family member who is a lawful resident in the UK.

Delays to the UK Government's immigration white paper and bill continue. The Prime Minister, Theresa May, originally planned to release a white paper on immigration before the summer recess. This is looking less and less likely, and expectations are now that we might see it in the Autumn after the Migration Advisory Committee report which is due in September.

The UK Government has provided some details on the application process for settled status. It will require three steps: proof of identify, proof of UK residence, and a criminal convictions declaration. The process will be available online and via smartphone app, with assistance available to those who do not have access to these facilities. The plan remains subject to criticism however. The House of Commons Home Affairs Committee's recently published [Windrush Generation report](#)¹⁰, pointed out that EU nationals may become easy targets for removal and that the UK Government's plan raises concerns for vulnerable groups like victims of domestic abuse, trafficking and exploitation, children in care, and those with mental health issues, as well as children who wrongly believe they are British. The 3Million project also continues to raise concerns regarding the lack of clarity on how the UK Government will handle the potentially severe consequences of people missing the deadline due to errors, technical glitches or lack of awareness. It is also concerned about the lack of legal guarantees as the UK Government's current intention is to implement the plan via secondary legislation, providing little opportunity for scrutiny and rendering it vulnerable to change in the future.

Next Steps:

- The UK Government published its **white paper on the future relationship between the UK and EU on 12 July 2018**. This document establishes in some detail (104 pages) what the UK is seeking

¹⁰ Available at:

https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/990/99007.htm#_idTextAnchor074

from the negotiations with the EU. It remains uncertain to what degree the UK's objectives will be successful because the EU has been quite clear about "cherry picking" aspects of the single market. Furthermore, while it is an evolution in the UK Government's position and will provide a basis for the negotiations to continue, it is very likely the EU will respond with a need for further clarification on some points. Particularly regarding:

- the Irish border
- how the UK Parliament can refuse to apply rules in the context of the suggested "common rulebook" on goods
- on how to reconcile accepting the remit of the Court of Justice of the European Union in areas covered by the "common rulebook" and European Agencies with which the UK is seeking participation, with the idea that this would "not involve giving the CJEU jurisdiction over the UK".

Very briefly, in the white paper the UK commits to seeking:

- To maintain the free movement of goods by adhering to a "common rulebook", which is essentially accepting EU rules on goods.
 - To end the free movement of services.
 - To leave the customs union and replace it with "facilitated customs arrangements" which would use technology to determine whether to apply the EU tariffs or the UK tariffs based.
 - To continue to participate in the following EU Agencies: Europol, Eurojust, the European Chemicals Agency, the European Aviation Safety Agency, and the European Medicines Agency.
 - To commit to the non-regression of environmental and labour standards.
 - To remain a member of the European Convention on Human Rights.
 - To establish an association agreement with the EU – though the implications of this are not yet clear.
- **The Trade and Customs Bills** are expected to resume the parliamentary process in July 2018. Organisations will want to think about the implications of these pieces of legislation and feed into their development as they progress through parliament.
 - As expected, the **EU Council in June 2018** saw less progress than was hoped, due to the delay in the UK Government's white paper. It is felt that this increases the risk that progress expected in October might be delayed until December, which will make opportunities to respond to developments even more time sensitive.
 - Going forward, influencing the **withdrawal agreement and implementation bill** due towards the end of the year will provide another opportunity to push for things like inclusion of the European Charter of Fundamental Rights in some form in the domestic legal system.

Any questions can be sent to the Wales Civil Society Forum on Brexit for information tailored to your organisation.

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