



Fforwm Cymdeithas Sifil Cymru ar Brexit

Wales Civil Society
Forum on Brexit

Second Forum - 24 July 2018

Event Briefing

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INTRODUCTION

The Forum hosted its second event on 24 July 2018 which saw representatives from around 30 organisations come together to discuss the implications of Brexit for the Welsh Third Sector. Three brief presentations were given:

- Glynne Jones, director of the office of the Secretary of State for Wales spoke about the UK Government's recent Brexit work.
- Swee Leng Harris of the Legal Education Foundation provided an overview of what to expect next on the Brexit timeline.
- Ruth Bergan of the Trade Justice Movement, spoke about the implications of the Trade Bill.

This was followed by a Q&A and a brief discussion on the UK Shared Prosperity Fund led by Phil Fiander from WCVA. Finally, the event saw delegates participate in a series of three breakout sessions on the topics of Brexit's impact on: Immigration and Migrant Communities, the Environment and Animal Welfare, and Human Rights and Equality.

Below is an executive summary of the discussions that took place. A fuller account of the day's discussions is also provided further below.

EXECUTIVE SUMMARY

Brexit Legislation and Timeline

- A definitive timeline for Brexit is difficult to establish due to the uncertainty of reaching a deal with the EU in October.
- Key upcoming moments include the motion in both Houses of Parliament to approve the Withdrawal Agreement, and the subsequent Withdrawal Agreement Bill.
- There are still opportunities for influence through MEP's, MP's, the Welsh Government and upcoming consultations.
- The Trade Bill and future UK trade policy raise several concerns in terms of potential lowering of standards, democratic process, transparency, and the UK's constitutional architecture with regard to devolved input into negotiations.
- There is little in the way of new information on replacing EU funding for the sector, the stakes are high however and there is still little formal dialogue between the Welsh and UK Governments on this. There has since been an [early day motion on this topic](#) and a [written statement on the UK Shared Prosperity Fund](#) shortly thereafter.
- The Welsh Government and third sector are seeking a partnership model for third sector funding based on need, but the lack of commitment by the UK Government to this is alarming the sector.

Human rights and Equalities

- Organisations argued that Brexit has heightened social cohesion issues characterised by discriminatory behaviours directed towards vulnerable minorities.
- Organisations remain highly concerned by the risks Brexit poses to Human Rights and Equality despite UK Government reassurances. They highlighted the need to remain cautious and proactive in identifying gaps.
- There was a call for further research to produce hard evidence of Brexit's impact in this area.

- Doubt was expressed as to whether the Wellbeing of Future Generation (Wales) Act (WBFGA) was a suitable framework to respond to the challenges of Brexit, despite the Welsh Government's position on this. It was acknowledged however that there is some disagreement within the third sector on the WBFGA.
- Organisations identified a need for information on possible responses in Wales to mitigate the negative impacts of Brexit, especially where legislation might be used.

Immigration and Migrant Communities

- The settled status scheme carries risks for groups of vulnerable individuals including: victims of trafficking, homelessness, labour exploitation, domestic abuse, as well as disabled individuals, children who are incorrectly thought to hold British nationality, and generally people who may be impacted by social exclusion.
- Concerns were raised regarding evidence requirements as some individuals may not have access to their documents, and it is uncertain how others may be required to evidence their vulnerable status.
- Significant attention was given to the immensity of the outreach operation that will need to accompany the settled status scheme.
- Participants reflected on third sector involvement in this operation and noted several challenges including: a lack of capacity with significantly more resources, the need for OISC registration to deliver advice and the fine line between this and the provision of information, access challenges even for third sector organisations and the lack of organisations in some parts of Wales.
- Participants also noted that Brexit has already shown signs of triggering an exodus of EU citizens within the workforce and reducing their influx. This creates sustainability risks for certain sectors, particularly, manufacturing, hospitality and health and social care.
- It was noted that future post-Brexit immigration policy would need to be designed to ensure that this problem is not aggravated, but that systems of temporary or seasonal visas risk reducing social cohesion and come with an enhanced danger of labour exploitation.

Environmental and Animal Welfare Rights

- Participants discussed using current regulatory standards as the baseline for post-Brexit policy to avoid both pressure on Wales to not implement higher environmental standards and the risk of deregulation.
- Concern was expressed about the Trade Bill and the need for amendments in the House of Lords to ensure that it does not negatively impact on environmental standards by triggering a 'race to the bottom'
- On the topic of post-Brexit governance, participants took the view that the suggested 'watchdog' does not have enough powers to ensure the same level of protection as that provided by EU. It was therefore felt that there is a risk of gaps emerging, particularly in compliance and enforcement.
- Finally, participants argued that there has been a lack of transparency and communication from the Welsh and UK Governments on how these issues will be addressed going forward under the intergovernmental agreement. Participants were surprised by the lack of momentum on these issues from the Welsh Government on topics such as where future policy and governance responsibilities would lie and how these would be codeveloped into the common frameworks.

FULL NOTE

I – Brexit Legislation and Timeline

It was first noted that the UK Government had recently published its White Paper on the Future Relationship with the EU. This was generally accepted as a starting point, but there was acknowledgement that there is still much work to be done. This will include the release of 70 UK Government technical notices to prepare for the potential of a no-deal scenario.

It was then commented that the likelihood of a no-deal outcome would seem to be increasing. However, should a deal still be on the table, uncertainty means that multiple timelines and outcomes are possible. Should a deal be reached in October, a motion will be passed in the two houses to approve it. If this happens without serious reservations, the Withdrawal Agreement Bill will be introduced (which would present an opportunity to influence the legislation). If a deal is not reached in October, this could be delayed to an emergency EU summit in November, or even until the scheduled summit in December. Meanwhile it was noted that Brexit is changing the UK's relationships both:

- Externally: with the EU and the rest of the world.
- and internally with constitutional challenges in connection with devolution (a decision on Scotland's continuity legislation is expected later in the year) and a shift in law making power towards the UK Government (800-1000 pieces of delegated legislation expected).

Regarding opportunities for influence:

- Members of the European Parliament are interested to hear views from within the UK.
- The Welsh Government is also an important avenue.
- It will be important to monitor and respond to government consultations on delegated legislation.

The Trade Bill which is due to resume the parliamentary process on 11 September 2019 was highlighted as having many implications. A primary concern was that there is a lack of democratic process and transparency in the negotiation of trade agreements domestically within the UK when contrasted with the EU (within which the EU Parliament has a right to be kept informed in such a way as to have its views considered). This was argued to be problematic because trade agreements cut across a range of policy areas including standards, health, education, the environment, financial services, intellectual property and regulatory cooperation... Trade agreements would also likely cut into areas of devolved competence and the lack of any formal means for devolved participation in trade negotiations was highlighted as a cause for concern. It was pointed out that Brexit has highlighted the inadequacies of the UK constitutional structure to respond to these challenges and that as a result calls for new intergovernmental machinery are being made from within civil society, academia and the Welsh Government.

There was concern that the UK will likely not be able to roll-over the trade agreements to which it is party through the EU, and that these will need to be renegotiated from a position of relative weakness with bodies with considerable lobbying capacity pushing for lower standards (like the US and large companies).

II – EU Funding and the ‘UK Shared Prosperity Fund’ (UKSPF)

There was little to say on this topic because not much has advanced since the last Forum gathering. It was noted that at the time of the event, there was still no clear vision of what the UKSPF will be or how it will operate. There general sense of anxiety in the sector is growing, and there is a need for information regarding the size and on the principles that will underpin the fund. Wales received 1.2 billion Euros for the last seven years of which 60-70% went towards Welsh Government programmes. Had Brexit not happened, organisations would already be planning budgets for the upcoming cycle. Various discussions are taking place in Westminster, but there is a risk that the devolved dimension could be lost. It was noted that using the Barnett formula would cut Wales’ ESIF funding by around 50%. The Welsh Government and third sector are instead seeking a partnership model based on need, but little dialogue with the UK Government has happened.

At the time of writing after the event, there have been a few developments on this topic. See this [early day motion on funding for Wales post-Brexit](#), and this [subsequent written statement](#). For more information, see the Forum’s July Brexit Update.

III – Human Rights and Equality

This breakout saw a discussion on a range of social cohesion, equality and human rights issues raised by Brexit. There was a general agreement that Brexit continues to pose a risk to Human Rights in Wales. Participants were not reassured by the UK Government's assurances that Human Rights would not be impacted. Concern was also highlighted about the Welsh Government ministerial focus on the Wellbeing of Future Generations (Wales) Act as the vehicle for promoting both equality and human rights in Wales.

Impact on Substantive Rights and Role for Civil Society

Participating organisations identified several sources of threats to equality and human rights. These included:

- Withdrawal from structural frameworks supporting human rights (the EU Charter being the primary concern)
- Ending of funding for projects promoting equality and access to rights (ESF in particular)
- Withdrawal from EU coordinated or sponsored networks and forums which provide guidance, information, learning and support on equality and human rights issues.

In addition, the session noted that Brexit has ignited long standing social cohesion issues resulting in increased discriminatory behaviour towards vulnerable groups including migrant communities, LGBT individuals and disabled persons. Participants asked whether a Wales wide policy on this issue may be called for because vulnerable individuals generally don't report their experiences unless there is physical injury (tolerance for these behaviours seems to be rising) and agencies like the Equalities and Human Rights Commission (EHRC) or local government are not able to pick up on the problem.

There was agreement that these issues need to be placed at heart of discussions on Brexit and organisations took the view that civil society should be cautious and seek to identify potential regression of equality and human rights because of Brexit and ultimately be proactive in responding to these threats. In contrast to this, some organisations felt that it was unclear who could hold the Welsh Government to account on this dimension of Brexit, noting that capacity is a challenge and there is potential for conflicts of interest based on funding sources. The EHRC was cited as a possibility, and it was noted that to avoid duplication, organisations might look to supporting its work.

Call for Research

A common theme in discussions was the prevailing lack of hard evidence on the impact of Brexit on equality and human rights. It was noted that there is anecdotal evidence amongst organisations and that while there is collective knowledge about the likely impact of Brexit, the evidence base needs hardening and existing work needs to be further distributed. One organisation noted that there may be opportunities emerging to conduct such research and cited the Welsh Government's EU Transition Fund as providing support for this. Suggested topics for potential research included:

- Social cohesion
- European Structural and Investment Funds
- Withdrawal from European Networks
- Divisiveness in Communities over Brexit – what this feels like for communities.

Challenges for the Sector

A first concern was expressed regarding the potential loss of funding in this area, specifically ESF programmes which supports, amongst others, women and victims of domestic abuse. It was noted that it is getting harder to fund programmes that impact Human Rights.

Potential disagreement within the third sector as to the propriety of the WBFGA as a vehicle for protecting and promoting equality and human rights in Wales was also highlighted. Because of this it was felt that further internal dialogue on this topic was necessary. Whether it will be adequate to generate adequate responses to Brexit related challenges in these areas was also questioned. While the discussion here was wide ranging, it was felt that civil society should ensure that any deficits are identified and brought to the attention of Ministers and the Future Generations Commissioner. However it was noted that the latter does not have any human rights duties and that the language of the WBFGA was not geared towards human rights protections.

Delegates raised the question of whether there should be new Welsh legislation on Human Rights or whether existing frameworks should be tweaked. It was felt that once gaps were identified, legislation would probably be needed beyond the WBFGA.

There was a general sense that organisations were not sufficiently aware of what is going on and that there was confusion as to what can be realistically asked of the Welsh Government in this area.

Finally, it was noted that there may need to be different responses regarding Brexit's impact on equality and human rights. This is because the legal frameworks are different, and in practice organisations may be operating to different agendas, such as tackling discrimination against women, or promoting children's human rights.

Sector relationships with the UK and Welsh Government

There continues to be a disconnect between the Welsh third sector and the UK and Welsh Governments on Brexit related concerns about equality and human rights. It was pointed out again that the EHRC requested [independent legal advice on the EU Charter of Fundamental Rights](#) as a response to the [UK Government's Right by Right Analysis](#) which had previously argued that loss of the Charter would result in no loss of human rights protections in the UK.

Despite this evidence contradicting the UK Governments policy position, and many [submissions by third sector organisations to inquiries such as that conducted by the National Assembly for Wales](#), it was argued that the UK Government had not acknowledged the concern and as a result, the sector remains unconvinced by its reassurances and feels that the issue is not high on the UK Government's agenda. As such it was noted that the sector will need to ensure accountability for any impacts of Brexit on equality and human rights, especially where gaps emerge because of Brexit related policy decisions.

Regarding the Welsh Government, it was noted that while it does have some human rights powers and could introduce legislation, it has not acted in relation the loss of the EU Charter. Instead its [default response to concerns from the sector has been that further legislation is not](#)

[necessary due to the WBFGA](#)¹. While delegates highlighted that this instrument does reflect human rights values it was felt that it was not adequate to ensure human rights are well protected in Wales (it does not refer to human rights and does not establish human rights duties). It was concluded that where gaps in protection are identified because of decisions taken in Wales, or where policy action in Wales might mitigate any negative impacts from Brexit, civil society needs information on possible responses. This is especially the case where responses might involve legislation or the exercise of Wales-specific powers over policy or legislation.

¹ See the letter from the First Minister, Carwyn Jones, to the ELGC and EAAL Committees available here (last accessed 10/08/2018): <http://senedd.assembly.wales/documents/s75669/ELGC5-16-18%20Paper%203%20-%20Letter%20from%20the%20First%20Minister.pdf>

IV – Immigration and Migrant Communities

Previous events saw participants raise concern about increased discrimination and hate crime towards people who had migrated to the UK. This was reiterated in this session and further discussions revolved around:

- The challenges associated with the settled status scheme.
- The potential risks of diminished migration to Wales because of Brexit.

The rights and wellbeing of vulnerable individuals emerged as a theme across both topics and there was overall acknowledgement that more information on the settled status scheme was urgently required as uncertainty aggravates many of the identified risks.

EU Citizens and Settled Status

There was broad agreement that the Home Office's settlement scheme raises several challenges to which answers have yet to be given. Those highlighted pertained to vulnerable groups not being aware of the need to apply for the scheme, barriers for such groups to undertake the process, and the immensity of the outreach work necessary to mitigate both challenges.

Groups discussed included victims of trafficking, homelessness, labour exploitation, domestic abuse, disabled individuals, children who are incorrectly thought to hold British nationality, and generally people who may be impacted by social exclusion. Concern was expressed about the documentation that would be necessary to obtain settled status for some of these. This has been flagged up as a challenge not only because some individuals may not have the necessary evidence owing to their vulnerable status (such as domestic abuse victims being denied access to their documents), but also because there is uncertainty over what documentation will be necessary to evidence, for example, having been a victim of trafficking. The inability to evidence residency and the uncertainty over what formal means would be available to evidence it was broadly accepted as a significant challenge.

Concern was also expressed over the fact that while individuals having obtained settled status will receive equal treatment for benefits, those with pre-settled status will be subject to the habitual residence test.

Some participating organisations present were members of the EU Immigration Users' Group (safeguarding) which connects the Home Office with third sector organisations representing vulnerable user groups to develop a scheme which is accessible for all. It was pointed out that this group shares the abovementioned concerns.

Significant attention in the discussion was given to acknowledging the immensity of the outreach operation that will be necessary to mitigate these risks. The Home Office is therefore exploring the potential for third sector organisation to play a role both in raising awareness through outreach activities, as well as to provide information and advice. Options being explored include both third sector organisations which specialise in supporting EU citizens and/or migrant communities generally, and other organisations which support vulnerable individuals who may encounter services users concerned by the settled status scheme. While conscious of the need for face to face support with this, participants highlighted that this may raise several challenges.

- The first was capacity: indeed, few organisations have thus far been identified who would be able to undertake these activities without considerably more resources.

- Secondly, it was noted that even experienced organisations face challenges in reaching out to all vulnerable individuals (access challenges).
- Thirdly, there were also concerns that Wales does not have an even coverage of third sector organisations, with the South East having many more than North Wales.
- Finally, concern was expressed regarding the need for OISC regulation to provide immigration advice.

Organisations noted having encountered a lack of ministerial awareness of the need for OISC registration. This is a concern for third sector organisations because the line between providing information (which does not need registration) and advice (which does) is thin and can have serious legal consequences if crossed. There are early signs in both Wales and Scotland of a lack of registered professionals to provide immigration advice, and this is something the Welsh Government is looking into.

Finally concern was expressed about the potential for future spikes in hate crime and discriminatory behaviour towards EU citizens and other migrant communities. There was broad agreement that finding a solution to mitigate this issue was difficult and participants were invited forward suggestions to the Welsh Government. Partly for this reason, the idea of reaching out to families and children through schools with regard to settled status was thought to be problematic given the recent concerns of bullying rooted in discrimination.

Risks associated with diminished migration to Wales

Participants highlighted that Brexit may reduce migration to the UK and Wales more specifically, and that this presented several risks. These included reduced workforces within certain sectors, some of which support society's most vulnerable, negative impacts on social cohesion and concerns regarding the rights and wellbeing risks for individuals migrating for work.

Quantitative data on the proportion of EU citizens living and working within Wales, especially broken down per sector is limited. Birmingham University has been conducting some research on this with the '[EU Families and Eurochildren in Brexiting Britain](#)' was brought to the attention of the breakout session. The project's report, '[Mapping EU Citizens in the UK: A Changing Profile?](#)', already suggests a drop in migration to the UK since the referendum.

[The Migration Advisory Committee's interim report](#) was also flagged up as containing some data on the amount of EU Citizens working in Wales broken down per sector. Participants noted that while the amount is relatively speaking not massive, certain sectors of the Welsh economy are particularly vulnerable (these included public and private health social care, but particularly hospitality, education, food manufacture and construction). The report indicates that in 2016, 2.5% of the Welsh population was made up of individuals born in EEA countries (the total proportional of people from EEA and non-EEA countries aggregated was found to be 5.6%). The report's data on workforce by sector was incomplete and admittedly

subject to considerable uncertainty, but found the following proportions of EEA citizens within the Welsh workforce:²

- 25.6% in the manufacturing of food and beverages
- 5.4% in hospitality.
- 3.9% in non-professional admin and support services activities.
- 3.4% in other manufacturing
- 3.1% in health

Both of these studies highlight that further regional analyses is necessary but participants stated that concentrations can be found within major metropolitan areas including Wrexham, Swansea and Cardiff.

The breakout session also discussed the implications of post-Brexit migration policy. It was noted that further delays to the Immigration Bill, which will provide details on the new immigration system for EEA citizens after the transition period has ended, are likely to be expected and that this might now not emerge before 2019. Prior to this the full report from the Migration Advisory Committee and the UK Government's White Paper on Immigration are both expected before the end of 2018. The Welsh Government's position has been to push for the 'fair movement' and that in the event of the introduction of regional VISAs, devolution would be the priority. However, participants took the view that potential future uses of low-skilled visas in sectors like construction and seasonal work visas, represent rights and wellbeing risks. Indeed they echoed the findings of [Research by the Migration Observatory](#) which notes that the use of such systems can damage social cohesion and expose workers to increased risks of labour exploitation.

While devolved migration policy is not as developed in Wales as it is in Scotland, it was pointed out that certain policy choices on things like access to benefits and employer and regional mobility will be essential to ensuring that Wales continues to maintain a sufficient workforce and retain those already working here. Indeed while not Wales specific, evidence from the [Nursing and Midwifery Council has stated](#) that the number of EU nurses leaving the register between 2017 and 2018 has risen by 29%, and 89% less EU nurses joined the register compared to 2016-2017.

Research highlighted and discussed

- [Migration Advisory Committee, EEA-workers in the UK labour market: Interim Update.](#)
- [House of Commons Home Affairs Committee Windrush Generation Report.](#)
- Migration Observatory, [Unsettled Status? Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit?](#)
- Migration Observatory, [Labour Immigration after Brexit: Trade-offs and Questions about Policy Design.](#)
- Laurence Lessard-Phillips & Nando Sigona, [Mapping EU Citizens in the UK: A Changing Profile?](#)
- Sarah Kyambi, Rebecca Kay, Christina Boswell, Kyle Taggart and Holly Porteous, [Choices Ahead: Approaches to lower skilled labour migration after Brexit](#)

² See table 2.2 on page 56 of the Migration Advisory Committee's report: "EEA-Workers in the UK Labour Market: Interim Update". Available at (last accessed 11/08/2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/694494/eea-workers-uk-labour-market-interim-update.pdf

V – Environmental and Animal Welfare Rights

This breakout session discussed several topics including: maintaining environmental standards, environmental principles, future UK wide and devolved governance as well as transparency and communication challenges in the policy development process.

Participants highlighted that the current regulatory frameworks for environmental protection and animal rights need to become the regulatory floor for future regulations and standards. It was noted that there is a risk of regulatory competition and that pressure might be exerted on Wales in the event of any attempt to implement higher standards than the rest of the UK, where standards may have been merely maintained or subject to post-Brexit deregulation.

Concern was also raised that future trade agreements should not negatively impact on existing standards and lead to a race to the bottom. To ensure that this deregulation does not take place, participants suggested that amendments to the Trade bill should be made to reflect the commitments made by the Environment Secretary, Michael Gove, to maintain high environmental and animal rights and standards.

There was agreement that UK and Welsh environmental principles and animal rights (broadly defined) need to be maintained and play a crucial role post-Brexit. Similarly, UK and Welsh environmental governance gaps raise concerns, in particular in relation to compliance and enforcement. Participants discussed which level (UK or Wales) should regulate post Brexit, with support being voiced for UK wide regulation. However confusion was expressed over where policy responsibility should rest, particularly in light of the lack of information on how common frameworks will be elaborated.

Furthermore, delegates argued that the proposed watchdog under consultation by DEFRA does not have enough powers to ensure that the level of rights and protection currently existing under EU law will be maintained post Brexit. The Welsh Government should ensure that environmental governance gaps (including relevant principles) are addressed. DEFRA has already published a consultation on environmental governance and principles but the Welsh Government still has not. Participants questioned the absence of momentum and consultation on these matters by the Welsh Government.

Finally, participants highlighted transparency and communication issues within the decision-making process and, in particular, the lack of opportunities for discussions and dialogue between civil society organisations and the Welsh and UK governments, specifically DEFRA. Further, they pointed out the absence of formal intergovernmental mechanisms that would seem necessary to operationalise the Intergovernmental Agreement and develop common frameworks. They called for more co-development and co-design between the governments of the four UK nations, where third sector organisations would provide momentum and crucial knowledge.

This summary has been compiled by Charles Whitmore, the Forum Coordinator, with thanks to Dr Simon Hoffman (Swansea University), Dr Ludivine Petetin (Cardiff University), Prof. Daniel Wincott (Cardiff University) and Lila Farkas (WCVA) for their help in chairing the breakout sessions and note taking.