



## Brexit and Children's Rights in Wales<sup>i</sup>

### INTRODUCTION

Children represent a quarter of the UK population which includes 718,248 aged 0-19 living in Wales<sup>1</sup>. Children in Wales benefit from EU enactments which have conferred entitlements in areas such as migration, child protection, health and safety, access to social and economic rights and family breakdown<sup>2</sup>. The EU provides funding which benefits children in the UK, especially those from disadvantaged communities. Despite this, discussion of the impact of Brexit on the rights and well-being of current and future generations of children has been virtually absent from mainstream debates on EU withdrawal. There has been even less consideration of its implications for children living in Wales or the other devolved nations.

Drawing on preliminary research, advocacy statements and consultation amongst stakeholders,<sup>3</sup> this working paper concentrates on four key issues for children in Wales arising from EU withdrawal. It identifies opportunities to protect children's rights through law and policy in Wales.

### KEY ISSUES

(not in any order of priority)

#### [1] Erosion of Guarantees of Fundamental Rights

The EU Charter of Fundamental Rights provides children with rights. The UK Government claims that EU withdrawal will not affect rights in the UK as the UK is party to international human rights treaties, including the UN Convention on the Rights of the Child (UNCRC). However, at UK level there is no statutory obligation on public bodies or the UK Government, to respect or promote children's rights. The UK Government has demonstrated some antipathy toward human rights. This raises a real concern that children's rights are unlikely to be prioritised when the UK leaves the EU.

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<sup>1</sup> UK Census 2011.

<sup>2</sup> For full details of the legal and policy instruments enacted at EU level in relation to children up to 2016, see: [http://ec.europa.eu/justice/fundamental-rights/files/acquis\\_rights\\_of\\_child.pdf](http://ec.europa.eu/justice/fundamental-rights/files/acquis_rights_of_child.pdf)

<sup>3</sup> See final section for further information on UK wide research and advocacy.

Withdrawal from the Charter will remove a pillar of rights protection for children in Wales, which, in the wider context of enmity toward human rights – including open hostility from some sections of the media – must raise serious concerns about how fundamental rights for children will be viewed in a post-Brexit UK.

Alongside a general anxiety about children's rights in Wales there is also cause for concern about gaps in protection for particularly vulnerable groups. Two particular concerns arise for children in Wales:

- Failure to provide comprehensive protection for trafficked children, especially the failure to implement guardianship<sup>4</sup>.
- The removal of EU law which enables an unaccompanied asylum seeking child in another member state to be reunited with their family in the UK makes the possibility that some children will be forced into the hands of traffickers more likely<sup>5</sup>.

In Wales the legal framework on children's rights has developed to a point of sophistication not seen in the rest of the UK. The ***Rights of Children and Young Persons (Wales) Measure 2011*** imposes a duty on Ministers to have due regard to children's rights under the UNCRC when exercising any of their functions. The Welsh Government's Children's Scheme and Child Rights Impact Assessment (CRIA) make a significant contribution to meeting this duty<sup>6</sup>.

The following recommendations, if adopted, would help protect children's rights in Wales during any transitional period or after Brexit:

- The Welsh Ministers, and in particular the First Minister and the Cabinet Secretary responsible for coordinating the Welsh Government's response to Brexit, should promote the rights of children in all discussions about transitional arrangements for a post Brexit Wales
- When exercising their policy functions the Welsh Ministers should take into account the Charter and its interpretation and application by EU institutions, including any guidance issued on children's rights implementation by the European Court of Justice.
- The Welsh Government should reject the EU Withdrawal Bill as drafted and should support any amendment which protect the rights of children, including the incorporation of the Charter.

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<sup>4</sup> In accordance with para. 14(2), Directive 2011/36, EU directive on combatting human trafficking, available at: [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/directive\\_thb\\_l\\_101\\_15\\_april\\_2011\\_1.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/directive_thb_l_101_15_april_2011_1.pdf)

<sup>5</sup> The Dublin III Regulation; available at:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604&from=en>

<sup>6</sup> Simon Hoffman, 2015, *Evaluation of the Welsh Government's Children's Rights Impact Assessment*, available at: <https://cronfa.swan.ac.uk/Record/cronfa30963>

- The Welsh Government should investigate opportunities for further protection of children’s rights in Wales, including a Human Rights (Wales) Bill to require due regard to the UK’s human rights obligations.
- The Welsh Government should prioritise the introduction of a guardianship scheme for unaccompanied asylum seeking children<sup>7</sup>.
- The Welsh Government should ensure that its planning on support for asylum seekers includes mechanisms to identify, rescue and support any child subjected to people trafficking.

## [2] Undermining Social Cohesion

Immigration was a divisive and caustic issue during the run-up to the referendum on 23<sup>rd</sup> June 2016. Immigration remains on the Brexit agenda, with attention centered on how to limit migration whilst meeting the needs of the economy with very little concern for the underlying community tensions which were exposed during the referendum campaign. Representatives of the Swansea based, Ethic Youth Support Team spoke at a conference on *The Impact of Brexit on Children in Wales* at Swansea University in January 2017. They reported an increase in offensive and threatening behaviour towards migrants and other ethnic minorities, including children, immediately following the Brexit referendum. This was confirmed by anecdotal evidence from the police<sup>8</sup>. Brexit is likely to be a protracted process, and immigration is unlikely to lose its salience in Brexit debates, or its potential to undermine community cohesion.

The ***Well-being of Future Generations (Wales) Act 2015*** includes a well-being goal of ‘A Wales of cohesive communities’. It is the duty of public bodies in Wales to take all reasonable steps to set and meet objectives which maximise their contribution to this well-being goal. All children in Wales are entitled to benefit from cohesive communities, and by virtue of the UNCRC, are entitled to live in their communities free from prejudice and harmful discrimination.

In order to promote the right of children in Wales to live in cohesive communities in a post-Brexit Wales, the Welsh Government should:

- Make a public commitment to support the recognition and treatment of migrants and refugees, including children, as persons with equal rights in Wales.
- Take a lead in publicising the benefits of migration for the Welsh economy.
- Review and revise the current Hate Crime Strategy and implement a robust action plan which is developed through engagement with external stakeholders

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<sup>7</sup> for example, see the response from Children in Wales to the NAFW Equality, Local Government & Communities Committee inquiry into Refugees and Asylum Seekers in Wales (2017)

<sup>8</sup> Information provided to Simon Hoffman by a senior police officer, South Wales Police, in December 2016.

- Undertake curriculum reform to ensure that future generations are properly educated about issues which proved divisive during the Brexit referendum, including migration.
- Take a lead in tackling corrosive anti-migrant and anti-refugee narratives in the public domain.

### **[3] Loss of EU Funding to Support Disadvantaged Communities**

Four million children across the UK live in poverty and child poverty rates are rising. Wales has the highest level of child poverty of all the UK nations, and greater than the UK average. 30% of children in Wales live in poverty. The EU does much to support the Welsh Government to tackle disadvantage and child poverty through Structural Funds, including the European Social Fund (ESF). The ESF provides financial support for projects that work with disadvantaged communities to improve employability, to support education and training, and to tackle social exclusion. The ESF has also been directly targeted at helping young people develop skills, to find jobs, and to provide childcare so parents can access employment training opportunities

In the UK, Wales is the largest beneficiary from EU Structural Funds, having received £4bn since 2000. Between 2014–2020, Wales is set to benefit from over £2bn further investment<sup>9</sup>. By January 2017 the Welsh Government had identified £192 million of EU funds to support projects that tackle poverty and improve youth employment. Although the UK Government has agreed that some ongoing support will be provided after Brexit through a Shared Prosperity Fund, details have not been agreed. There is continuing uncertainty over the future of projects supported by the ESF. The UK Government has failed to make any commitment to projects commencing after the Autumn Statement 2016, merely stating that these will only be supported if they are “good value for money” and “in line with domestic strategic priorities”. There is no guarantee that the UK Governments priorities will reflect those of the Welsh Government on child poverty or enhancing community prosperity. Early indications from the NGO sector in Wales are that this uncertainty is already having a harmful impact in terms of future planning. Organizations working with vulnerable families and children are unsure about continuing funding to support their work moving forward.

The following recommendations, if adopted, would help ensure that funding uncertainty as a result of Brexit does not adversely impact on children in Wales:

- Welsh Ministers should press the UK Government to provide a guarantee that replacement funding will be allocated to Wales equal to or in excess of current ESF support following EU withdrawal.

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<sup>9</sup> Information about EU structural funds in Wales is available here:  
<http://gov.wales/funding/eu-funds/2014-2020/?lang=en>

- The Welsh Government should guarantee that all monies allocated from the Shared Prosperity Fund will be used to support projects presently supported by the ESF which are delivering positive outcomes for children, young people and their families
- If there is any cut in funding from the UK Government under the Shared Prosperity Fund the Welsh Government should prioritize the continuance of projects and services that support children living in poverty in Wales
- The Welsh Government should carry out CRIA of any decision which will or might result in cuts to projects and services that support children living in poverty in Wales, whether as part of any overall budget determination or as an aspect of departmental planning .

#### **[4] Children’s Voice Ignored**

Brexit has not engaged with children, this is despite the fact that they are the people who will have to live with the consequences of Brexit in the long term. Failing to give due weight to children’s views on the issue of EU withdrawal is a breach of Article 12 of the UNCRC. Children need to be given meaningful opportunities to have their opinions heard by Brexit decision-makers, and should be included in discussions so that their rights are championed as part of the process<sup>10</sup>. This was one of the messages from a conference, *The Impact of Brexit on Children in Wales* (above). All those present, including children and young people, called on the Welsh Government to pay more attention to the views of children in the Brexit process<sup>11</sup>. The joint White Paper, *Brexit: Securing Wales’ Future*, included a commitment to listen to the views of children and young people about Brexit, because decisions taken will be “critically important to their future”<sup>12</sup> (p.32).

In Wales the 2011 Measure requires that children in Wales should be meaningfully consulted on policy issues arising from Brexit in Which the Welsh Minsters participate, and CRIA provides a mechanism for consultation. Whilst we welcome the recent commitment by the Welsh Government to establish an children’s advisory group, and to provide funding to support consultation activity through workshops with children, details of the how or when this will be allocated, what is anticipated from the consultation, or how children will be given a voice in decisions that will be taken about Brexit over the coming months and even years, have yet to emerge

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<sup>10</sup> *Statement and Call to Action on the Impact of Brexit on Children and Young People*, available at <http://www.childreninwales.org.uk/news/news-archive/child-rights-welfare-groups-urge-uk-government-not-sideline-childrens-rights-brexit-talks-190617-wesni/>

<sup>11</sup> Report, *Brexit: Implications for Children in Wales*, 19th January 2017, Swansea University, College of Law and Criminology, available at: <http://www.swansea.ac.uk/law/wales-observatory/conferences/brexitimplicationsforchildreninwales/>

<sup>12</sup> Available at: [https://beta.gov.wales/sites/default/files/2017-02/31139%20Securing%20Wales%C2%B9%20Future\\_Version%202\\_WEB.pdf](https://beta.gov.wales/sites/default/files/2017-02/31139%20Securing%20Wales%C2%B9%20Future_Version%202_WEB.pdf)

The following recommendations, if adopted, would help provide children and young people with a voice in Brexit debates in Wales:

- The Welsh Government should, with expediency, publish details of how it intends to allocate the money it has set aside to support consultation with children on Brexit.
- Children in Wales should be given substantive opportunities to be heard using both formal and informal mechanisms (e.g. social media), to contribute to debate about Brexit in Wales.
- The Welsh Government should establish an advisory group of children and young people as soon as possible, and ensure that there are mechanisms for engagement between this group and the adult European External Advisory Group.
- Children should be provided with opportunities to communicate with decision-makers and should receive feedback as to how their views were given due weight and how, if at all, they have impacted on decision-making.
- The Welsh Government should explain how it intends to engage with children on issues that arise in Wales as Brexit takes effect (including those issues noted above).
- Children should be provided with accessible information so that they can understand the potential implications of Brexit and are empowered to express views on the issues that affect them.
- The views of children of all ages on Brexit should be sought and taken seriously, not just those aged 16 and over and consultation should be inclusive of diverse groups of children and young people.
- Whenever policy decisions in Wales areas a result of Brexit the Welsh Government should consider applying a CRIA, and if a CRIA is applied there should be meaningful consultation with children.
- The NAfW and Welsh Government should progress with electoral reforms which will enable 16 and 17year olds to vote in future elections, and to make representation at a UK level for similar changes.

### **Other UK wide matters impacting on Wales**

This briefing draws a focus on the impact of Brexit and children in Wales. Whilst it is recognized that key decisions on the shape of Brexit will be taken by the UK Government, the briefing has sought to make practical recommendations to the Welsh Government concerning the exercise of devolved powers. However, Wales should also contribute to wider debate on the priorities for children following Brexit, and the content of EU withdrawal legislation. With this in mind the Welsh Ministers, Assembly Members, children and child rights stakeholders should be aware of initiatives taking place outside Wales to raise the profile of children's rights in the Brexit process. These include:

**Making Brexit Work for Children**<sup>13</sup> – a report which will be released shortly by a coalition of child rights organizations seeking to draw attention to child rights issues at UK Parliamentary and governmental level. The report will deal with many of the issues raised in this briefing. However, as the report is aimed at the UK Government in particular, it also address issues which are under the control of UK Ministers: the issue of the **status of EU national children** in the UK; the potential impact of Brexit on **child protection in Wales** and the maintenance of EU child protection infrastructure to facilitate cross-national gathering and exchange of information relating to both victims and perpetrators of child abuse; and, cross-border family law.

The EU facilitates a high degree of coordination for cross-border issues on child safeguarding, for example on dealing with child abuse imagery, child sexual exploitation and human trafficking. There are three main bodies that the UK belongs to that are crucial in helping to tackle crimes against children: European Arrest Warrant, Europol and Eurojust (cooperation & coordination bodies), as well as ECRIS (a criminal conviction database) are essential in fighting cross border crimes. As safeguarding transcends all borders, it is essential that cooperation with these mechanisms continues in some form after the UK leaves the European Union.

- The Welsh Government and Assembly Members should press UK Government to maintain UK's membership of cross border bodies such as the European Arrest Warrant, Europol, Eurojust and ECRIS which serve to provide safeguards for children in Wales

Cross-border family law is also specifically dealt with in a report by **Together (Scottish Alliance for Children's Rights)** *The Impact of Brexit on Children's Rights: Case Study on Cross-border Family Law*<sup>14</sup>.

**For further discussion of the issues raised in this briefing contact:**

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<sup>13</sup> Working title.

<sup>14</sup> [http://www.togetherscotland.org.uk/pdfs/Brexit\\_Cross\\_Border\\_Report\\_Oct17.pdf](http://www.togetherscotland.org.uk/pdfs/Brexit_Cross_Border_Report_Oct17.pdf)

Or follow developments on our website:

<http://www.childreninwales.org.uk/our-work/brexit-childrens-rights-wales/>

Or Twitter: #BrexitCYPWales

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<sup>i</sup> This is a revised version of the briefing paper delivered on the 18<sup>th</sup> October 2017 at the Children in Wales Cross Party Group on Children and Young People