The Impact of Brexit on Forced Migrant Children

Shining the Spotlight on Children

Did You Know…?

- According to Eurostat, in 2015, 88,254 unaccompanied minors (UAMs) sought asylum in the EU Member States (35,250 in Sweden alone).
- Only 3,045 UAMs sought asylum in the UK in 2015 and only 23% were granted refugee status, significantly less than in EU countries.
- In 2015, 9,835 decisions were made relating to the dependants (including children) of asylum seekers in the UK. Only 28% of dependants were granted asylum or another form of protection.

Who are forced migrant children?

Forced migrants include asylum seekers, refugees or trafficked persons who are forced to leave their country of origin due to fear of persecution, war, famine and acute poverty. In this context, EU law defines persons under 18 as particularly vulnerable.

The ongoing refugee crisis demonstrates that close cooperation between countries is essential if these vulnerable migrants are to be protected from further danger and exploitation.

How does EU Law regulate the position of forced migrant children?

EU law does not completely determine the content of national immigration laws, but it does impose minimum, harmonized standards relating to the entry, residence and treatment of forced migrants. These instruments all offer special protection to children, particularly unaccompanied children, and require Member States to act in their best interests.

What rights do forced migrant children have in the UK according to EU Law?

Forced migrant children are generally from countries outside the EU and do not enjoy the same rights as EU citizens.

Forced migrant children have the right to claim asylum and to international protection. They have the right to legal representation, to appropriate care and accommodation and to access education and health services. For most unaccompanied children, these rights expire as soon as they reach 18.

The UK has opted out of a lot of other EU law (including recent, recast) EU Immigration law provides enhanced protection for children. Notably the UK has chosen not to adopt EU law that entitles immigrant children to be reunited with their family members in the UK.

The EU Dublin Regulation requires asylum seekers, including children, to lodge a claim for asylum in the first EU country in which they arrive. The UK’s geographical distance from the entry points through which asylum seekers mainly enter the EU means that, in most cases, other Member States have to take responsibility for them. Member States can request that the UK takes in an applicant for asylum (including unaccompanied children) if they have family members already living in the UK but so far very few children have benefited from this.

How might Brexit affect the position of forced migrant children?

It is important to note that EU rules relating to forced migrant children are informed by international law (ex. the 1951 Refugee Convention and the 1989 UN Convention on the Rights of the Child) by which the UK continues to be bound. UK immigration law will still have to uphold the standards of protection and entitlement contained in these instruments following Brexit.

That said, the UK will have to renegotiate or replace specific EU laws relating to minimum reception conditions as well as the procedural and substantive EU rules relating to care, accommodation, education, legal representation and health.

The UK will also need to renegotiate its participation in the EU Dublin Regulation. If not, the UK is likely to receive an increase in asylum claims because it will no longer be protected from the rules that prevent asylum seekers from lodging claims in Member States other than the one in which they first arrive.

Moreover, the UK will no longer necessarily benefit from existing, significant EU support and funding for resettlement, training, research, data collection, law enforcement and intelligence sharing on immigration issues.

The Brexit negotiations should seek to:

- Ensure that sufficient financial resources, at least on a par with those currently provided by the EU, will be made available to respond to the needs of forced migrant children in the UK.
- Ensure that current EU legal provision (relating to unaccompanied migrant children in particular) is firmly embedded and protected in UK domestic law;
- Maintain access to EU data, intelligence, training, research and security infrastructure with a view to protecting forced child migrants to and from the UK;
- Uphold the right of children who are seeking international protection to be reunited with family members who are already in the UK.

Some useful sources if you want more detail…

ILPA Brexit and the Common European Asylum System
House of Lords EU Committee on Home Affairs Report of its Inquiry into unaccompanied migrant children in Europe

Useful blogs…

Quitting the EU wouldn’t give Britain more control over refugee and migrant flows