



protecting **CHILDREN** and
uniting **FAMILIES ACROSS BORDERS**

CFAB is the UK member of the International
Social Service global network

A photograph of a woman with dark hair hugging a young child from behind. The child is wearing a plaid shirt. The image is overlaid with a semi-transparent red filter.

The Impact of Brexit on Children and their Families Crossing Borders

A fact sheet for professionals protecting children

The Impact of Brexit on Children and Families Crossing Borders

This factsheet is for local authority social workers although it provides relevant reading for any professional working to safeguard and/or protect children. It explores the impact of the UK leaving the EU on children and families who are crossing, or separated by, international borders.

Children's rights, EU children in care in the UK, the settlement scheme and future international cooperation in relation to family law cases are explored here and practical steps which may be taken by professionals are also suggested.

EU Exit – where are we now?

The UK leaves the European Union in March 2019. A lot will change between now and then, as there is still uncertainty regarding the outcome of negotiations about the UK's Withdrawal Agreement. The 'Chequers plan' published by the UK government in July 2018 offered some insight into the government's intention relating to key policy areas such as immigration, trade and security. Negotiations are still underway and at this time, it is difficult to distinguish from this plan what specific action will be taken in cases where there may be an impact on children and their familiesⁱ.

There is a need for a clear consideration of where and how children and families who cross, or are separated by, international borders. Children depend on the success of negotiations for their future rights and protections and are often vulnerable due to other factors in their lives. The 'voices' of children have so far not been heard clearly as the UK departs the EU, despite being the generation who will inherit a post-Brexit UKⁱⁱ. Working alongside its partner organisations, Children and Families Across Borders (CFAB) aims to draw attention to the Brexit issues which are most relevant to children and families in the UK and overseas.

Children's rights

The EU (Withdrawal) Bill received Royal Assent and became an Act of Parliament on 26 June 2018. This provided the means for EU law to be transferred into UK law, and for the government to start adding secondary legislation to ensure that the UK has essential statutes in place by the date of EU Exit.

Concern has been raised, given the time pressures, over the extent to which statutory instruments will be used, as opposed to primary legislation which requires a greater level of parliamentary scrutiny and assessment of impact. There may be implications in this for the protection of children's rightsⁱⁱⁱ.

There are worries that Brexit will remove the safeguards to children's rights currently provided by the EU Charter of Fundamental Rights. The government's White Paper does note that the provisions under this legislation are also enshrined in other international treaties which the UK has ratified, such as the UN Convention on the Rights of the Child (UNCRC)^{iv}.

We recognise that work has been done by the UK government and Parliament to hear the voices of vulnerable children, but that more can and should be done. The government has recently published a further set of 'no deal' papers, in the event that a Withdrawal Agreement cannot be reached with the EU. These make no specific reference to children or children's rights. CFAB is most concerned

with any aspects of Brexit that impact on a child's right to family life, be that in the UK or with family overseas. The uncertainty in relation to the protection of children is a concern when considering that the UK government could change its current commitment to citizens' rights in the event of a 'no deal' scenario.

EU children in care in the UK

In 2016, there were 679,000 European national children under the age of 18 living in the UK^v and there are currently 72,670 looked-after children in England^{vi}. Unfortunately, we do not know how many of these children are European national because the recording of nationality data for children looked after by local authorities is inconsistent. The implication of this is that UK local authorities do not know which, or how many, children in their care will be affected by Brexit^{vii}. It is therefore vital that local authorities are provided with clear guidance on how to support these children's interests' post-Brexit. Local authorities need to give children the correct information about their settlement status, rights and entitlements to safeguard their futures.

Practical steps to take

There are both benefits and challenges in exploring citizenship when working to build rapport with children and their families. Social workers may feel that in asking for proof of citizenship, they are undermining trust. Recording citizenship may vary across professional practice cultures and even in doing so, social workers are likely to gather information verbally from family members rather than from travel or birth documentation.

We suggest that employing creative and interactive genograms could be part of the approach to gathering information, to make clear to families that the intention is not to be intrusive. Social workers can advise that any requests to learn more about nationality or citizenship are for the sole purposes of understanding the resources, strengths and challenges unique to the family in order to support and/or protect the child. Families may be reassured by an open explanation that such information, along with any other forms of disclosure, is bound within the usual parameters of confidentiality.

Professionals should ensure that information about every child's nationality is accurately recorded. Where children have an EU connection, professionals should seek to take copies of passports, birth certificates or travel documents as early as possible in any assessment process. They will be essential if future applications under the EU settlement scheme are to be made for the child. They can also be useful in understanding the family's links abroad; particularly in the case of families fleeing overseas with children in need of protection.

Professionals should also note that the 26 week timetable set within a child's public law proceedings may be revised and extended in increments of eight weeks, in cases with an international element where investigation or assessments have to be carried out abroad.

Settlement scheme

Current government plans for the settlement scheme suggest that local authorities will be able to apply on behalf of looked-after children.^{viii} It is unclear at this stage what this means in practical terms and to what extent the child in question will be responsible for their own application^{ix}. This raises concerns about how accessible and easy the system will be to use, and a shortage of legal advice combined with stretched local authority resources are likely to further complicate this issue.

There are also concerns regarding the eligibility criteria used for settlement and how this affects EU children in care. In order to qualify for settlement, an applicant must be able to demonstrate lawful residence, continuous for five years. '*Lawful residence*' means that an individual must be a worker, self-employed, student, self-sufficient or a jobseeker, or a family member of someone who is exercising these treaty rights. The majority of European national children will be able to rely on their family relationships to meet the requirements of settlement or permanent residence. However, children in care are often estranged from their parents, and will not be able to meet the current definition of lawful and continuous residence^x.

To date, the view of children in relation to settlement status has tended to be linked to family members, and with status dependent on their parents.' This view overlooks the significant number of EU children in the care of local authorities. It also risks making children's rights dependent on the rights of their parents, which may not always be in the best interests of the child.

Practical steps to take

Assessing social workers should gather information about names, dates of birth, addresses and activities such as employment or study of family members of EU children. Gathering this information during initial genogram work as early on as possible is a priority, as it will inform future permanence planning, including settlement status of children and young people. When children already looked after, consider historical chronologies as a source of information relating to the activities of family members.

Professionals should consider the status of the local authority's parental responsibility and the effect of any orders in place relating to the individual child. Professionals must consider children they work with who are already in local authority care, and may have been for some time. Checking that children with family connections to the EU have the right documentation is essential as the UK's departure from the European Union approaches in 2019.

Professionals can consider whether a settlement application could be made for a child relating to a safe family member, for example where a Special Guardianship Order might be appropriate and the adult in question is exercising their treaty rights. Professionals should also consider whether parents are open to working alongside the local authority to achieve settlement applications, or if breakdowns in communication are likely to hinder this process.

Professionals should consider if children can make applications in their own right with support from their social worker, for example in the case of young people aged sixteen and over. The young person may be living in Local Authority care or supported lodgings, in employment or study, or seeking employment. This may be the most appropriate recourse to a settlement application for the young person.

Instruments for international civil judicial cooperation

There is considerable uncertainty about the future of family law post-Brexit. When a court has to determine the future of a child with European connections, an EU Regulation known as Brussels IIa governs matters of parental responsibility.

In a child protection context, Brussels IIa ensures that care proceedings concerning a child with European connections are heard by the 'correct and competent' court and that protective orders issued for children can be recognised and enforced across the EU. Brussels IIa also provides a vital framework of cross-border cooperation and communication between Member States which can, for

example, enable family members overseas to be assessed as potential carers for a child and facilitate the exchange of information between authorities to protect children.

As outlined above, whilst the government will incorporate EU law into UK law through the EU (Withdrawal) Bill, and then consider which laws it keeps and which it will repeal, instruments of Civil Judicial Cooperation such as Brussels IIa cannot be effectively transposed in this way. These reciprocal instruments depend upon the participation and agreement of the other Member States. Their continued effectiveness is therefore dependent upon the UK's future relationship with these Member States individually.

In a *Future Partnership Paper*, published in August 2017, the government indicated that it wished to negotiate a "new civil judicial cooperation framework, as an aspect of the deep and special relationship with the EU"^{xi}. The recent White Paper (July 2018) restates this intention, but without any further specifics.

As part of this, the government wants to enter into new agreements with the remaining Member States reflecting the terms of existing agreements (e.g. Brussels IIa) rather than using alternative instruments which do not have their origins in EU law. Questions then arise about what form these new agreements will take and how issues about their interpretation will be resolved, bearing in mind the government's apparent opposition to the jurisdiction of the Court of Justice of the European Union, which oversees all EU laws.

If it is the case that Brussels IIa will be removed entirely and the UK will use the 1996 Hague Convention in cross-border cases in its place, then there needs to be training provided and awareness raised about the differences between the two legal instruments. The differences are subtle yet important for professionals working to protect children involved in cross-border disputes.

Practical steps to take

Professionals should again record the child's nationality accurately at the first possible opportunity. Assessments and care plans relating to EU national children should contain a reference to the family's country of origin.

Professionals should communicate the international element for any child or related family member to their local authority's legal service, for early consideration of any differences between the two legal instruments of Brussels IIa and the 1996 Hague Convention. Establishing which legal framework the family's country of origin falls under early on in the process will inform how assessment and care planning is shaped and ensure that opportunities for family placements overseas or with settled family members in the UK are not missed.

Conclusions

It is clear that Brexit could have far-reaching implications for children and families crossing the EU/UK border, for EU children who are separated from their parents and for British children being looked after by family members in another EU Member State.

The impacts outlined above and the best solutions to the issues covered all require careful consideration. It should not be forgotten that Brexit also represents opportunities as well as challenges. In particular, it represents an opportunity to involve children and young people to a greater extent in policymaking which affects their lives, something which the devolved nations have already demonstrated good progress in^{xii}. It is also an opportunity to explore local practice and procedures in light of Brexit, for example around recording the nationalities of children in the care of local authorities, so that agencies are better prepared.

Whatever the outcome of the negotiations between now and March 2019, it is important that the voices of children and families are represented whenever possible to ensure that vulnerable children are not further disadvantaged or prevented from enjoying their right to a family life.

ⁱ HM Government (2018) *The future relationship between the United Kingdom and the European Union*. TSO: London.

ⁱⁱ Though the All-Party Parliamentary Group *Better Brexit for Young People* is aiming to make young people's voices heard <https://publications.parliament.uk/pa/cm/cmhallparty/170106/better-brexit-for-young-people.htm>

ⁱⁱⁱ Brexit and Children Coalition (2017) *Making Brexit work for children – The impact of Brexit on children and young people*. London: The Children's Society.

^{iv} Department for Exiting the EU (2017) *Legislating for the United Kingdom's withdrawal from the European Union*. TSO: London.

^v Migration Observatory analysis of Labour Force Survey 2016, Quarter 1 (Jan-Mar), conducted May 2017. Numbers rounded to nearest 1,000.

^{vi} <https://www.gov.uk/government/collections/statistics-looked-after-children>

^{vii} Coram Children's Legal Centre (2018) *Briefing: Settlement for European national children in care*. Coram: London.

^{viii} Within the meaning of section 22(1) of the Children Act 1989, section 17(6) of the Children (Scotland) Act 1995, section 74(1) of the Social Services and Well-being (Wales) Act 2014 or article 25(1) of the Children (Northern Ireland) Order 1995.

^{ix} Home Office (2018) *EU Settlement Scheme: Statement of Intent*. Home Office: London.

^x Coram Children's Legal Centre (2018) *Briefing: Settlement for European national children in care*. Coram: London.

^{xi} HM Government (2017) *Providing a cross-border civil judicial cooperation framework*. Department for Exiting the European Union: London.

^{xii} Brexit and Children Coalition (2017) *Making Brexit work for children – The impact of Brexit on children and young people*. London: The Children's Society.