

The Civil Society Brexit Project: *Information*

BREXIT AND VIOLENCE AGAINST WOMEN AND GIRLS

About the Civil Society Brexit Project

The Civil Society Brexit Project is a collaboration between the **Scottish Universities Legal Network on Europe (SULNE)** and the **Human Rights Consortium Scotland**, funded by the **Legal Education Foundation**. We give information, insight and independent advice to make sure that organisations in Scotland are able to influence Brexit as much as possible. The Project will also help organisations to prepare for Brexit consequences for themselves or their beneficiaries.

www.civilsocietybrexit.scot

Who is this Civil Society Brexit Project: *Information* for?

This briefing is written for civil society organisations working in Scotland. For more information, contact civilsocietybrexitscot@gmail.com

What areas of rights does this Brexit Information briefing cover?

This briefing covers the potential impact that Brexit could have on the legal and policy frameworks and the provision of services relating to violence against women and girls (VAWG) in Scotland. It provides an overview of a range of different aspects of relevant EU law and policy areas.

The Civil Society Brexit Project project has produced separate briefings which deal specifically with the potential impacts of Brexit on employment, equality, human rights, women's rights and citizenship – see www.civilsocietybrexit.scot.

On 19 March 2018 the European Union and the UK published the Draft Agreement on the Withdrawal of the United Kingdom from the EU ([link](#)). This Draft Agreement is referred to in this briefing as, in some areas, for example EU citizenship and criminal

justice cooperation, it is the most authoritative source of information regarding what *might* happen in the lead up to any transition period and following Brexit. To be clear, this 'Draft' Agreement does not have the force of law if – and until – it is finally agreed, and may be subject to change until that point. It is also possible that the UK will leave the EU under different arrangements, including without an agreement ('no deal'). Where relevant, reference is made in the briefing to the impact that this could have on the area of VAWG.

Human Rights

If the UK leaves the EU, the UK's human rights framework will be destabilised.

- **We will still have the Human Rights Act and European Convention on Human Rights**

The Human Rights Act (HRA) is the main law protecting civil and political rights in the UK. It will not be directly affected by Brexit because it is based

on the European Convention on Human Rights, which has nothing to do with the EU. There is a separate political debate about whether it should be repealed and replaced with a British Bill of Rights, but this is independent of Brexit.

- **We may lose some human rights protections.**

The EU Charter of Fundamental Rights is the central human rights instrument in EU law. It sets out the full range of civil, political, economic and social rights of EU citizens and everybody resident in the EU which should be protected within the scope of EU action. It includes all the rights protected by the Human Rights Act, but has a much broader scope: it contains fifty different Articles, each covering at least one – and many several – rights and freedoms. Its stated aim is to ‘strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.’

The Charter’s provisions include the right to dignity (Article 1), the right to non-discrimination (Article 21), the rights of the child (Article 24), the right to fair and just working conditions (Article 31), and the right to an effective remedy (Article 47).

The EU Withdrawal Act passed at Westminster simply copies over existing EU law into UK law on the day of Brexit, calling it ‘retained EU law’. However, this law specifically does not keep the EU Charter of Fundamental Rights. It would no longer apply to any aspect of retained EU law if we leave the European Union. This means that certain protections, such as the right to an effective remedy, may be lost and do not have equivalent protection from any other aspects of UK law. Other provisions, such as the right to non-discrimination, are more narrowly defined in domestic law than in the Charter.

The Scottish Government has said that it is considering how to keep these Charter protections in Scots law through new legislation. It should be noted that this would only apply to devolved areas of law – EU Charter protections would still be lost in reserved areas of law such as immigration, equality and employment.

International human rights obligations will remain, and may be strengthened

As a member of the UN and the Council of Europe, the UK’s obligations under international law will remain. The UK has ratified the UN Convention to Eliminate Discrimination against Women (CEDAW) which includes specific protections from violence, and the UK Government reports on their progress to implement this every 5 years.

Furthermore, the First Minister’s Advisory Group on Human Rights Leadership proposed new legislation in Scotland to incorporate UN conventions into Scots law, including economic and social rights, and rights specifically for women. The First Minister has endorsed the general direction of this report but more details are not yet known.

- **Concern about ratifying the Istanbul Convention**

The EU institutions have called for all member states to ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention). There are also plans for the EU to directly accede to the Convention which is the first legally binding international instrument on preventing and combating violence against women and girls at international level. It establishes a comprehensive framework of legal and policy measures for preventing such violence, supporting victims and punishing perpetrators.

However, the UK is one of seven member states which has yet to ratify the Convention. Without pressure from the EU institutions and if the UK moves outside of the EU’s human rights framework, there is a real danger that the UK Government will not ratify the Istanbul Convention. This could entrench existing weaknesses in the national legal framework and leave it vulnerable to regression over time, reducing current protections. There is a risk that the UK will fall behind other countries within the EU in preventing and combatting VAWG.

Equality and Employment Rights

Equality and employment rights in the UK are underpinned by EU law which has strengthened and extended the legal framework over many years. With the UK's withdrawal from the EU, the guarantees currently provided by EU law will no longer apply. Unless they are replaced and protected by domestic provisions, there is a risk that such rights could be pared back and even disappear.

Social rights currently underpinned by EU law include protection against sex discrimination, maternity rights, working time restrictions including annual leave entitlements, and rights protecting part-time and temporary agency workers. Their loss or a reduction in protection would pose a threat to women's economic independence and could directly impact on their ability to support themselves and their children. This could make it more difficult for some women to leave violent or abusive relationships.

The Westminster Government will have the power to amend or repeal domestic legislation in the employment and equality fields following exit day. This is a matter of concern for women's rights because many of the relevant employment rights are currently provided for in Regulations rather than in Acts of Parliament. This leaves them particularly vulnerable to repeal or amendment without full parliamentary scrutiny. This includes the working time rights and those applicable to part-time, temporary and agency workers and some maternity and parental rights.

A parallel concern is that the UK might not follow rights developments at the EU level: this relates to both legislative developments and associated policy, as well as developments in the case law of the CJEU which has been of great importance in interpreting and extending anti-discrimination and equality rights particularly in relation to gender.

Social Security

The UK's social security system is not directly subject to or affected by EU law. However, Brexit may result

in some changes which could have negative and disproportionate impacts on women. This is because, due to economic and social inequalities, women are more likely than men to be the recipients of social security which can provide a crucial safety net for those seeking to leave abusive relationships.

Under the Scotland Act 2016, some social security powers have been devolved to Scotland which now has responsibility for certain benefits such as disability benefits, carer benefits and maternity grants, with other benefits remaining with Westminster. The partial devolution of social security means that, following Brexit, it is possible that EU citizens' access to benefits in Scotland may be different from elsewhere in the UK but there is no clear information about that at this stage.

Many benefits are subject to complex and restrictive qualifying conditions including means testing, making it difficult for some women, particularly those with care commitments, to live independently. In the event that the UK does not remain in the single market and free movement rights are lost, further restrictions could be placed on those living in the UK from elsewhere in the EU which could affect their access to welfare benefits, social housing and healthcare. UK citizens living in other EU member states could also be affected if restrictions are placed on their residency rights and entitlements to social security.

Criminal Justice

- **Uncertainty about cross-border criminal law cooperation after Brexit**

Currently, the UK selectively opts in to key measures of the EU's well developed framework dealing with cross-border cooperation in policing and criminal law enforcement. EU law provides a range of legal instruments that protect women who are the victims of crime. Many women who experience domestic abuse rely on these protections because of the threat of continuing violence.

BREXIT AND VIOLENCE AGAINST WOMEN AND GIRLS

The relevant provisions include:

- The [Directive on the rights, support and protection of victims of crime](#) which establishes an EU-wide legal standard covering the provision of specialist services and support for victims of domestic abuse and other forms of violence against women. Support includes information, advice, practical, emotional, and psychological support.
- [European Protection Orders](#) (EPOs) which guarantee that ‘crime victims who are granted protection from their aggressors in one EU member state will be able to get similar protection if they move to another’. An EPO enables cross-border recognition and application of such protections as contact restrictions and bail conditions.
- The [Anti-Trafficking Directive](#) which guarantees assistance and support for victims of trafficking and provides rights to appropriate protections including compensation and integration and labour rights.

The draft Withdrawal Agreement enables these cross-border aspects of criminal law cooperation to continue throughout any transition period (though this Withdrawal Agreement has not been agreed by MPs). However, as yet, there is no agreement between the UK and the EU as to what will happen with these cross border criminal co-operations following Brexit and any transition period or a no deal Brexit.

Civil Justice – Reciprocal Arrangements

EU law guarantees certain reciprocal rights under civil law which provide mutual recognition of measures between member states. One example of such reciprocity which is of great relevance in the context of VAWG is [Regulation No 606/2013](#). This Regulation allows the holder of a protection order, such as a non-harassment order granted under Scots law, to have automatic intra-EU recognition so that one order will apply in all member states. This means that if a perpetrator is in one member state and uses phone, text or social media to harass someone in

another member state, the recipient can obtain a court order in her country of residence which will be enforceable in all member states. This prevents a perpetrator from moving across borders to avoid enforcement and provides victims with protection across the EU.

The loss of this Regulation could result in each country having to strike a reciprocal agreement with the UK to recognise all orders. Without this, it is possible that a woman experiencing domestic violence who has obtained a protection order from one jurisdiction would have to apply for a new order if she travelled to another European country. The potential loss of the rights from this Regulation could put women at risk of violence and restrict their free movement, thereby creating a barrier to access to justice.

Citizenship and Residency Rights

We do not yet know what (if any) agreement will determine the arrangements surrounding the UK’s departure from the EU. However, the UK has set down a [Settlement Scheme for EU nationals](#) which will apply if the Draft Agreement on the Withdrawal of the UK from the EU is finally agreed and becomes law, or in the event of a no-deal Brexit. The relevant dates and some other details will differ in either scenario. It is also still possible that an alternative agreement will be reached between the UK and the EU with different arrangements attached.

In the following section, the relevant aspects of the settlement scheme and its impact on women and girls facing the threat of violence will be considered. Note that different residency regimes apply to those from within the EU and those from outside the EU.

EU Citizens

Concern about new requirements for the right to continue to live here

All EU citizens (indeed all EEA and Swiss citizens) and eligible family members living in the UK by 31 December 2020 (or by the date the UK leaves

the EU without a deal) are required to apply for immigration permission to remain in the UK under the 'settlement scheme'. Those who can evidence 5 years' continuous residence can apply for 'settled status'. Those with less than 5 years continuous residence can apply for 'pre-settled status'. Those who attain 'pre-settled status' will be able to continue to live in the UK to enable them to acquire five years of residence. At that point, they can apply for settled status. Those who have already applied for and obtained 'permanent residence' status in the UK under current EU free movement law must still apply for the new 'settled status' to secure their continued right to reside in the UK in the future.

The rules and process for applying for settled status have been published by the UK Government and include the production of certain documents in order to prove identity and the required period of residence at the time of the application. The need to submit specific documents could put those women experiencing or threatened with domestic abuse at risk particularly if their autonomy is reduced and/or they are reliant for access to documents on partners or ex-partners who have possession. Refusal to grant access to the documents and the threat of deportation can be used by a partner to exert control over a woman in such circumstances. Trafficked women may find it particularly difficult or impossible to access the relevant documentation. Some may not be aware that they can and need to apply.

The Home Office has said that applicants will be able to demonstrate their UK residence using its data matching with records held by HM Revenue and Customs and the Department for Work and Pensions. If applicants have not been working or claiming benefits, other documentation, such as utility bills, tenancy agreements, records from healthcare providers or evidence previously submitted as part of an earlier application under EEA regulations or another immigration route will suffice. However production of this evidence may also prove very difficult/impossible for some women who may not have any agreements in their name and who may have had little or no engagement with external agencies.

Other alternative forms of evidence will also be considered in cases concerning the family members of women who are reliant on their relationship with an abusive partner. Further provisions are in place for those unable to present a passport or identity card for 'compelling practical or compassionate reasons, or due to circumstances beyond their control'. Applicants are likely to require assistance with applications and the production of suitable evidence, e.g. from their local Citizens Advice Bureau or similar agency, and may need legal advice. Those missing the application deadline (30 June 2021 assuming UK leaves on terms of the draft withdrawal agreement) may lose their right to remain.

Non-EU Migrants and Refugees

The settled status scheme could be particularly problematic for non-EU citizen family members seeking settled status as they will not qualify in their own right, but rather as a result of their relationship to a qualifying person. If that qualifying person is an abusive partner or ex-partner, women and their family members may find it particularly difficult to make the application and to access the required documentation.

• Partners/Spouses

Brexit could lead to increased hardship for non-EU migrant and refugee women. Women from outside the EU whose partners or ex-partners are EU citizens may be reliant for their rights to reside and remain in the UK on a 'spouse visa'. The conditions attached to such a visa can leave those who are experiencing or who have experienced abuse reluctant to speak out or to leave their abusive relationship for fear of deportation. If the woman's partner is British, the woman's status will remain unchanged by Brexit. However, if he comes from another EU member state, her right to reside and remain in the UK could be directly affected by the requirement for him to apply for settled status. Such women will be reliant on their partner's ability and willingness to make such an application and to share details.

Women who leave abusive relationships and whose visa status is dependent on their partner's status should inform the Home Office and seek help from a specialist immigration lawyer as soon as possible. Those women who are not able to meet the requirements to apply for Settled Status may be at risk of having little to no protection from domestic violence and will also be vulnerable to deportation.

• Family Members

Family members seeking to apply for settled or pre-settled status may also face considerable evidential barriers. Under the settlement scheme, family members who arrive and are living with an EU citizen before 31 December 2020 may continue to remain and apply for the new status. Those family members arriving after 31 December 2020 must have evidence of the relationship existing before 31 December 2020 and be either: the pre-existing spouse, civil partner, durable partner, child or grandchild under 21, dependent child or grandchild older than 21 or, dependent direct relative in the ascending line. Those who marry or who enter into a civil partnership after 31 December 2020 will be subject to UK immigration rules (which are likely to be much stricter).

Other (extended) family members who are dependent upon an EU citizen for their UK residency rights, such as aunts, sisters, or nieces will be able to remain and apply for the new status if they are resident by 31 December 2020. Family members that the EU citizen is dependent upon, for example, an EU citizen child's non-EU citizen carer, may also remain provided they were resident before the 31 December 2020.

Children whose parents apply for settled status can apply for settled status at the same time. Children born to parents with settled status will be born British. The same applies for children born or adopted after 31 December 2020.

What if There is a 'No Deal Brexit'?

Although the UK intends to continue with the Settlement Scheme in the event of a no deal Brexit, the legal default position is an end to EU free movement on 31 October – the reset 'exit day'. The Settled Status Scheme will still apply, but only to those in the UK by 31 October 2019.

The deadline to apply will also be brought forward by six months. EU citizens who are resident on exit day will be required to apply for settled status by the end of 2020. They can be joined by existing close family members but a cut-off date of 29 March 2022 has been introduced.

Women's Services

• Provision of Services

The UK's membership of the EU currently enables access to European social funding for women's services including welfare and health services and those directly relevant to countering VAWG. Following Brexit, UK organisations will no longer be eligible for EU grant funding which has been used extensively by non-governmental organisations and other groups and networks which work on tackling domestic abuse and VAWG. For example, the Rights Equality and Citizenship Programme has a current budget of £343m for the whole of the EU, with over a third of this funding being offered to the UK including for support groups. Other EU funds support survivors to access the training, education and other services needed to build and maintain independence.

EU Structural Funds have also provided crucial funding for many organisations working with women. A notable strength of EU funding has been its focus on equality and diversity, with a mandatory requirement across all programmes to ensure that those most at risk of discrimination are included¹.

1. See comment in 'Equality and Human Rights Commission, The future of funding for equality and human rights in Britain, 2019 (<https://www.equalityhumanrights.com/en/publication-download/future-funding-equality-and-human-rights-britain>) and Equally Ours, UK Shared Prosperity Fund, 2018 (<https://www.equallyours.org.uk/wp-content/uploads/2018/10/EDF-SPF-briefing-Final-October-2018.pdf>)

However, it is not yet clear what the Shared Prosperity Fund – the UK Government’s proposed successor to the EU Structural Funds – will look like. The UK Government consultation on this new fund was expected in 2018 but has not yet been published (June 2019).

• Access to Services

EU citizens who are the survivors of domestic abuse living in the UK, may face tighter restrictions on entitlements such as social housing, healthcare and welfare benefits following Brexit. Restricting survivors’ access to these vital services could result in them being forced to return to abusive partners. UK survivors resident in other EU member states may face the same predicament.

Knowledge Exchange

The EU has been a great source of collaboration, joint learning and evidence collection leading to policy development. Following Brexit, the UK is likely to have limited input into related initiatives and this could have a negative impact, e.g. on UK universities’ research and knowledge exchange on VAWG. Organisations seeking to develop and share best practice with European partners may also be affected.

Does Brexit Provide any Opportunities for Improvement?

Digital Safety

Violence against women and girls can take many online forms, including harassment, stalking and revenge pornography, and is often part of a pattern of coercive and controlling behaviour. The EU approach has tended to rely on ‘soft’ regulation using voluntary means so that online platforms and providers take responsibility for tackling these crimes through self-regulation. Brexit may provide an opportunity to establish a more robust domestic framework to protect against online abuse.

Public Procurement

Public procurement is currently governed by EU regulations. After Brexit, procurement would fall within the devolved Scottish Parliament competence (though the UK Government has indicated that this is one of the areas where they will implement a ‘common framework’ that sets the same approach and regulation across the UK.) Current EU procurement rules include aspects such as cost of services and the situations where public tenders are required. It may be that after Brexit, procurement rules affecting the commissioning of services for women or girls affected by domestic violence could be changed, for example with additional value given to quality or continuity of services. It may be that women’s refuges will not be required to submit competitive tenders to Government in order to continue to provide the service. However, there is not yet any clarity around potential future arrangements and this area of policy remains very speculative.

What do we *know* will happen to legal rights currently provided by EU law when the UK leaves the EU?

According to the provisions of the EU (Withdrawal) Act 2018, these rights will be unaffected at the point when the UK leaves the EU (except for the Charter of Fundamental Rights). This is because they are already implemented by UK legislation and so fall into the category of ‘EU derived domestic law’ which section 2 of the Act states will continue to have effect ‘on and after exit day’. Such legislation can be amended by virtue of section 8 of the Act. Any amendments would have to go through the enhanced scrutiny procedure contained in Schedule 8 of the Act. This means that amendments would have to be actively approved by both Houses of Parliament.

What do we not know yet?

- We do not yet know what exactly will happen during any possible future transition period between the official date of Brexit and the entry into force of the new relationship between the UK and the EU. But it is likely that the UK will need to

BREXIT AND VIOLENCE AGAINST WOMEN AND GIRLS

continue to conform with all EU rights during that period. For example, the EU recently adopted the Transparent and Predictable Working Conditions Directive, which is aimed at strengthening the rights of casual workers and improving their working conditions. The Directive needs to be implemented by EU Member States into their domestic law within the next three years and so would apply to the UK should Brexit (and any subsequent transition period) be delayed.

- We do not yet know what developments in rights terms will happen at the Scottish level. The First Minister's Advisory Group on Human Rights published a report "*Recommendations for a new human rights framework to improve people's lives*" on 10 December 2018 which may lead to policy changes and/or legislation in the field of economic, social, cultural and environmental rights in Scotland. However, in the employment context that will require greater powers to be given to the Scottish Parliament in this area.
- We do not yet know how far the UK Government is intent on using its Henry VIII powers under the EU (Withdrawal) Act 2018 to amend or repeal 'retained EU law' protecting women's rights.
- We do not know how the rights outlined above will be developed by the EU Court of Justice in the future, i.e. the rights protections there might have been if the UK had remained in the EU.
- We do not know how new EU legislation and policy will affect women's rights in the future.

Prof. Nicole Busby, July 2019

Further Reading

Conor Kavanagh, 'UK Immigration System Offers Insufficient Protections For Migrant Women Trapped In Abusive Relationships', Human Rights News, Views and Info, March 2019.

Migration Observatory 'Unsettled Status? Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit?', University of Oxford, April 2018.

Equality and Human Rights Commission, 'Pressing for Progress: Women's Rights and Gender Equality in 2018'.

Women's Aid, 'The Impact of Leaving the European Union', 2017.

Institute for Government, 'Public Procurement', 2019.

Further information on EU action on violence against women is available at <http://ec.europa.eu/justice/saynostopvaw/>

Produced in consultation with Scottish Women's Aid



WHERE CAN I GET MORE INFORMATION?

If there is any aspect of the briefing or a particular issue around Brexit where you would like more detailed advice or information, we are happy to help! Please get in touch with us at hrcscotland@gmail.com

There is also information available online at civilsocietybrexitscot@gmail.com