



Brexit and the Future of Asylum Policy in the UK

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Background

Few modern international events have been politicized as much as Brexit, the withdrawal of the United Kingdom from the European Union. Through a referendum vote on 23 June 2016, citizens of the UK opted to leave the European Union, with a 51.9% majority (Garrett, 2019). Since then, politicians have been struggling to draft terms of the UK's withdrawal that are both efficient and politically pragmatic. Any agreement must be acceptable to both parties; the UK and the remaining EU.

While economists have been focusing on the trade implications of the deal, organizations active in advocacy for the rights of migrants have been struggling to bring to light the challenges that Brexit will create for migrants and refugees. Many analysts have argued that issues of immigration were amongst the most significant factors in acquiring "Leave" votes (Garrett, 2019). Considering that the referendum took place at the peak of the European migrant crisis, Amanda Garrett argues that "by blurring the boundaries between EU and non-EU, economic and humanitarian, and legal and illegal migration, the Leave campaign challenged established notions of membership, nationality, and human rights in a democratic vote, and won" (2019).

This "blurring" was a necessary political move in order to securitize the issue of migration in the UK. As of 2018, there were approximately 3,5 million EU migrants living in the UK, a group that constitutes 7% of the UK's workforce. This population has created concerns amongst UK citizens, who fear an influx of foreign workers. Further, according to Home Office Statistics, in 2017 the UK was fifth on the list of EU countries receiving asylum applications, with 33,500 applications (MacGregor, 2018). The UNHCR estimates that the UK is hosting 126,720 refugees as of 2018, out of 25.9 million refugees globally (House of Lords, 2019). Given the anti-migrant rhetoric that was employed in the "Leave" campaign, it is essential to highlight the implications of Brexit on the refugee and migrant community.

In the case of either the ratification of the Withdrawal Agreement or no deal, the impact on migrants and refugees will be substantial. The consequences of Brexit as they relate to economic and labor migrants from the rest of the EU are intimately connected to the form of Brexit, so far remain largely unclear and will be an important area for future discussion. However, the focus of this paper is on the ways in which Brexit will alter the UK's asylum policy. Although significant ambiguity remains in this area as well, some observations on what will change and which areas will not be affected are already possible. What a removal from CEAS and Dublin system will mean? It is the aim of the paper to bring more light into what we can expect in terms of Brexit's impact on the UK asylum policy.

Asylum Policy: What Changes and What Remains?

Asylum policy in the UK is based on a combination of global-scale international treaties, regional EU-level agreements, and domestic policy. Thus, Brexit will only impact asylum policy so far as it relates to those EU-level agreements. International treaties and domestic policy will remain unchanged, for the foreseeable future.

Asylum policy and international obligations that will **not** be impacted by Brexit:

- 1951 UN Refugee Convention
- 1967 UN Refugee Protocol
- UN Global Convention on Refugees
- UNHCR Resettlement Program: The UK is committed to resettling 20,000 Syrian refugees
- Bilateral agreements (particularly, UK-France agreements)
 - Le Touquet Agreement
 - Sandhurst Treaty
 - 2019 joint action plan

Asylum policy that **can and will** change with Brexit:

- Common European Asylum System (CEAS)
 - Policy dealing with spontaneous asylum applications/arrivals in the UK
 - Humanitarian protections
 - 2005 Asylum Procedures Directive
 - 2003 Reception Conditions Directive
 - Agreements with non-EU states regarding cooperation on returns and transfers
- Dublin System
 - Refugee resettlement
 - Family reunion
 - Dubs scheme for unaccompanied refugee children
- EU Funding
 - Asylum, Migration, and Integration Fund (AMIF)

Perhaps one of the most notable changes resulting from the removal of the UK from the CEAS is that the UK will not remain a signatory of the 2005 Asylum Procedures Directive and 2003 Reception Conditions Directive. These policies grant asylum seekers the right to remain in the

country of application while they await their asylum cases to be processed (House of Lords, 2019). There is no current international law that addresses this gap. As a result, the UK could turn to a policy similar to the “Migrant Procedures Protocols” of the United States, where migrants are returned to unsafe countries while they await a hearing on their asylum claims. This policy has been criticized by international human rights associations and could prove to be problematic if it becomes a global phenomenon.

Additionally, cooperation in bilateral agreements between the UK and EU-member states, such as those between the UK and France, and the UK and Belgium, may disintegrate with Brexit. Although neither the UK nor the EU-members have indicated an intent to leave, the bilateral deals were made in the context of the EU relationship. International relations between the UK and EU member states may change or be strained by Brexit, particularly in a no-deal scenario (MacGreggor, 2018).

Next, the UK will remain part of Dublin System during the transition period, but ultimately wishes to leave the Dublin System (House of Lords, 2019). At present, the Immigration, Nationality, and Asylum (EU Exit) Regulations 2019 have committed the UK to considering Dublin cases already registered in the system, and throughout the transition period. This legislation was driven by a recent case, when a couple traveled to Ireland after their UK visa expired and applied for asylum there. The Irish authorities brought the case to the European Court of Justice to see if they could legally return the migrants to the UK. The European Court of Justice ruled that until Brexit is official, British authorities are required to accept asylum seekers who entered the EU through their territory, regardless of Britain’s intention to leave the EU and withdraw from the Dublin system. (Sanders, 2019)

Political strategists advise that leaving the Dublin System, even after an official Brexit, may not be in the UK’s best interest. Without access to Eurodac, the information system used to track asylum applications in the EU, it will be difficult for the UK to know whether or not an applicant has already applied for refugee status elsewhere. Further, the Dublin System creates provisions for family reunification that are not outlined in current global or UK domestic policy (House of Lords, 2019). In a document published by UK Parliament, the EU Home Affairs Sub-Committee noted that the “most important” impact of Brexit would be the loss of a safe and legal family reunification system. Under a no-deal Brexit, this policy gap would be disastrous for vulnerable refugees.

Key information regarding the Dublin System:

- The Dublin System creates safeguards for refugees, including time limits and examination processes for potential transfers
- According to the organization Safe Passage, children have more rights under the Dublin

System, which allows for family reunification with non-parental family members

- The UK is a “net receiver” under the Dublin System, meaning that it receives more migrant transfers than it sends outside the state.
- 80% of incoming Dublin transfers to the UK are cases of family reunification

Finally, as a member of the EU, the UK is entitled to funding through EU directives, such as the AMIF. According to the House of Lords, the UK has been the largest recipient of AMIF funding during the 2014-2020 Multiannual Financial Framework period. The AMIF has funded programs in the UK such as AVAIL and the New Roots project, which promote successful integration (House of Lords, 2019). Therefore, with either a Withdrawal Agreement or no-deal Brexit, the UK will need to find a new source of funding if such programs will continue to exist.

To summarize, removal of the UK from the CEAS and Dublin System will create gaps in legislation. Though it will be possible to draft protections for migrants and refugees to bring UK domestic law up to the standards set by EU legislation, it may be a time-consuming process. Fears of the vulnerabilities presented to migrants and refugees are summarized by Eleanor Harrison; “One of my critical concerns is that, in other people’s priorities in negotiations in the event of no deal, asylum is not at the top of the list” (House of Lords, 2019).

UK migration policy following Brexit is detailed in document published by the House of Lords, available [here](#).

Current State of Play

The EU has agreed to an extension request made by the UK, delaying Brexit until 31 January 2020.

There was a general election in the UK on 12 December 2019, in which the Conservatives led by Boris Johnson secured 80-seat-strong parliamentary majority. The elections have brought more clarity into the immediate future. The UK is set to leave the EU on 31 January 2020 with a transition period lasting until 31 December 2020 during which both sides are to find a deal on a trade agreement. The UK refuses to extend the rather short period for negotiations, worrying the EU representatives.

Conclusions

Whether Brexit occurs with the current withdrawal agreement, a modified agreement, or under a no-deal situation, there will certainly be impacts on migrants and refugees. As it is difficult to predict whether Brexit will end with a formal withdrawal agreement or a no-deal case, the impact of Brexit on economic and labor migrants is still unfolding. What is almost certain, is that low-skilled EU migrants seeking entrance to the UK could find it more difficult to immigrate (MacGregor, 2018).

For refugees and asylum seekers, the implications may be far grimmer. Although they will still be allowed to apply for refugee status in the UK, according to international law, separated families in Europe may have a harder time reunifying. In the short term, the UK is committed to pursuing cases registered in the Dublin System. However, in the long term, as the UK completes the transition period, gaps in legislation may present themselves, leaving unaccompanied minors more vulnerable than before.

In order for Brexit to occur smoothly, with limited impact on the most vulnerable populations, it is necessary for Parliament to take precautions by closing gaps in asylum legislation and bringing all UK domestic policy up to the standards set by the EU.

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