

FAQ: Brexit and UK Refugee Law and Policy

Contents

The United Kingdom has obligations towards refugees and other displaced persons that emanate both from EU and international refugee and human rights law. Brexit will have an impact on some of the systems that the UK participates in but the key underpinning obligations will continue to bind the UK under its international obligations.

This FAQ discusses:

- The components of the Common European Asylum System
- The Dublin System and how BREXIT will impact the UK
- The responsibilities of the UK towards asylum seekers and refugees
- Relocation and resettlement
- Migrant smuggling and human trafficking

It is intended to outline some of the main issues relating to forced migrants in the EU and the UK, and is therefore not comprehensive.

Unless the context otherwise requires, the terms refugees, humanitarian protection and asylum seekers are given the meaning they have under national and international law in the area.



Source: Nicolas Pinault (VOA)

Q: What is the Common European Asylum System?

A: CEAS is the body of legislative and other measures at EU law that seeks to harmonise the way in which claims and claimants for international protection (whether refugee status or subsidiary protection) are regulated. CEAS not only provides guidance on who is entitled to forms of international protection, it also puts in place minimum standards for how asylum seekers are to be treated and the procedural standards to be applied when making that determination. The core components of the CEAS are;

- The Qualification Directive – which tells us who is a refugee, a person eligible for subsidiary protection and what their rights are once that determination has been made;
- The Reception Directive – which puts in place minimum standards for the basic rights and entitlements of asylum seekers as they wait for their status to be determined;
- The Procedures Directive – which speaks to the rules and standards applicable to the process of seeking international protection including for instance the right to be assisted by a lawyer;
- The Dublin System – which regulates which EU Member State is responsible for an asylum seeker or refugee.

Q: Was the UK required to participate in the various CEAS instruments?

A: No, the United Kingdom has the right (a right not enjoyed by most EU Member States) to opt in or opt out of various EU legislative and policy measures on migration and asylum. This privilege was negotiated when issues of Justice and Home Affairs could no longer be vetoed by any one Member State. Similar options are available for Ireland and Denmark but not for any of the other Member States.

In fact, the UK has opted into some of the instruments, but not into others. In particular, the UK opted out of the recast directives that came into force since 2013 and which revised the standards adopted in the original directives. It must be noted however that the UK opted into the first set of CEAS instruments and whilst it originally argued that any obligations under those directives lapsed when the recast directives came into force, this was determined not to be the case. As such, at present, the UK continues to be bound by the original CEAS instruments it opted in to.

Q: Does BREXIT mean that the UK will no longer be responsible for asylum seekers and refugees?

A: No, the United Kingdom's obligations towards asylum seekers and refugees stem primarily from the 1951 Refugee Convention of which the UK has been a State party since 1954. The Convention provides both the universally recognized definition of refugee (as a person who has a well founded fear of persecution on the grounds of race, religion, nationality, membership of a particular social group or political opinion) as well as a list of rights to which refugees are entitled. These include the right not to be returned to countries where one faces persecution (also known as non-refoulement), the right to access the labour market, education and healthcare. Interestingly, at the time of writing, the UK is a member of the Executive Committee of the United Nations High Commissioner for Refugees, the United Nations' refugee agency responsible amongst other things for overseeing the implementation of the Convention.

Beyond the 1951 Convention other obligations also emanate from the UK's obligations under international human rights law including the principle of non-refoulement that is corollary to the prohibition of torture, cruel and inhumane treatment as established under the European Convention on Human Rights and the Convention against Torture. Other groups have also been protected including for instance individuals with serious medical conditions.

The UK will remain bound by its international law obligations and as such the key responsibilities of the United Kingdom will subsist post BREXIT. Whilst the CEAS creates the status of 'subsidiary protection' of which there is no equivalent in international law, this status covers situations to which return would anyway be illegal under the UK's ongoing domestic and international obligations as discussed.

Q: What share of the EU's refugees are in the United Kingdom?

A: Using the third quarter of 2016 as an example, only 3% of asylum applications in the EU were filed in the United Kingdom. This amounted to 9200 applications, compared to for instance 12400 in Greece or 237400 applications in Germany. Indeed given its geographical location, and the fact that the UK does not participate in the border-check free Schengen area meant that the number of asylum seekers arriving in the UK during the crisis remains relatively low, with countries like Germany and Sweden being main destination countries.

Q: Was the EU obliging the UK to take in people from Greece and Italy? What will happen with these?

A: The EU does indeed have an agreement for its Members to relocate 160,000 persons from Italy and Greece. This agreement was reached as a way to address the current refugee crisis that disproportionately impacted countries at the periphery of Europe and in particular Italy and Greece. Progress on these relocations has been markedly slow. The United Kingdom did not participate in the EU relocation programme and as such is not obliged to (and did not in fact) take people in from Greece and Italy.

The UK has however made pledges to resettle a number of persons from outside the European Union as part of the UNHCR Resettlement Programme. In particular the UK has pledged to resettle some 20,000 Syrian refugees by 2020. In January 2016 the UK Government also pledged the resettlement of further people at risk, in particular children at risk however none of these have been resettled as yet. These pledges are made independently of the UK's membership of the European Union and as such will not be affected by BREXIT.

Q: What is the Dublin System and how will BREXIT impact it?

A: The Dublin System is a set of measures set out with the purpose of regulating the distribution of asylum seekers across the various Member States. The Dublin Regulation, which forms the backbone of the system, provides a number of criteria for assigning responsibility to Member States for an individual asylum seeker. These criteria include the presence of family members in that Member State, humanitarian grounds as well as the first country of entry criteria (which is the most broadly used). Under the Dublin System, the UK asks other countries to take back people for whom they are responsible under the regulation whilst the UK is asked to take in people it is responsible for (because for instance they have family members in the UK).

In 2015 the UK made 3489 requests to other countries under the Dublin system whilst it received 1173 requests. In terms of actual transfers of persons, it received 131 persons and returned 519 during the same period. (Source: Eurostat). Continued participation in the Dublin system is unlikely after Brexit unless the UK negotiates a specific arrangement for such participation.

Beyond the rules themselves, the Dublin system also incorporates other measures such as the EuroDac database of fingerprints that is used to determine which countries a particular individual has been through and which is used to assign responsibility for that individual. Access to such systems will also not be possible when the UK leaves the European Union.

Q: What does BREXIT mean for the situation in Calais?

A: The UK and French governments have signed an agreement that allows the UK to undertake border control on French territory thereby preventing people from crossing to the UK and seeking protection there. This agreement was reached independently from the European Union and therefore in theory will not be effected by BREXIT. In practice however, France might re-consider it's position if the UK is no longer part of the EU and the Dublin system. This in turn might result in a higher number of spontaneous arrivals, coupled by the inability of the UK to return those individuals to other countries that might be responsible for that individual under the Dublin system.

Q: Will the UK be bound to continue fighting migrant smuggling at sea?

A: The United Kingdom's obligations to fight smuggling start from the UN Smuggling Protocol and it's obligations under that Protocol will not change upon the termination of its membership to the European Union. These obligations include that of collaborating with other States to ensure that vessels suspected of being involved in smuggling are investigated. Moreover, the UK, and all UK registered vessels, whether State owned or private, will continue to have an obligation to engage in search and rescue activities whilst at sea. These obligations will not change.

However, the UK will no longer participate in FRONTEX coordinated operations which have been actively engaged in anti-smuggling and search and rescue activities in the Mediterranean unless a specific agreement is reached in this regard.

Q: How will the laws about Human Trafficking be effected?

A: The EU directive(s) on trafficking will no longer apply to the United Kingdom once the withdrawal agreement is finalized. However, irrespective of BREXIT the UK will remain a party to the Council of Europe Trafficking Convention and the UN Trafficking Protocol. As such, the vast majority of obligations as regards prevention of trafficking, prosecution of traffickers and protection of trafficked persons will continue to bind the United Kingdom. These obligations will include the provision of a reflection period for trafficked person to decide about collaborating with the authorities. All obligations arising from those instruments, as well as under other instruments of international law (including Article 4 of the European Convention on Human Rights) will continue to bind the United Kingdom after BREXIT.

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