

# More Than a Nation of Sanctuary: Why we should care about less visible migrant groups

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February 2023



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### Acknowledgements

This document forms part of a broader project of work funded by the Justice Together Initiative. The Bevan Foundation would like to thank the Justice Together Initiative for their ongoing support.



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V.3 - Page 3 amended to reflect Supreme Court ruling (R)Miller v Secretary of State for Exiting the European Union, 2017, which ruled that the Sewel Convention relating to legislative consent is not legally binding.

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Registered charity no. 1104191      Company registered in Wales no. 4175018

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## Summary

Immigration is a reserved power and is not devolved to Wales. The Senedd and Welsh Government have no power to contravene UK immigration law, but they can use devolved powers to mitigate some of its social effects. We outline examples of where devolved powers have been used in this way, and where Welsh policy has developed to respond to the needs of migrants and refugees.

Where the Welsh Government has used its powers to support migrants it has largely focused on refugees and people seeking sanctuary. More needs to be done to support other groups of migrants in Wales whose position is equally insecure, and who face significant challenges relating to their immigration status.

We highlight three groups with significant and complex needs and explore the particular challenges they face:

- People with no recourse to public funds
- Undocumented migrants and people with insecure immigration status
- People on the ten-year route to settlement

These groups include people who have come to the UK on different visas and in different ways, and they often overlap. A person with no recourse to public funds could also be an asylum seeker who is appeal rights exhausted, for example, or they could have leave to remain as a visitor, a spouse, or under family or private life rules.

We urge the Welsh Government to:

- take a broad, proactive and inclusive policy approach to all migrants in Wales;
- consider and respond to the needs of all migrants in need of support, protection, and specialist services;
- ensure that all migrants living in Wales can access legal advice and representation;
- ensure that all migrants living in Wales have access to information about their rights and can exercise them.

# 1. Introduction

In 2019, the Welsh Government announced that Wales would become a Nation of Sanctuary, in a global first endorsed by the United Nations. This statement underlined an intention to define “a distinctive Welsh response”<sup>1</sup> when meeting the UK’s international obligations and in responding to the needs of asylum seekers and refugees in a devolved context.

As immigration is a reserved power, and not devolved to Wales, the immigration system is for the most part beyond the reach of Senedd legislation. The Senedd has no power to contravene UK law and cannot change rules that control the UK’s borders. The Senedd and government in Wales can, however, work within their powers to mitigate some of the social effects of immigration law, particularly where this intersects with devolved responsibilities such as social services functions.

This paper explores some of the ways in which the Welsh Government has to date used its powers to support migrants. It notes that it has been most progressive in respect of asylum seekers and refugees, and EU citizens. These are very welcome and important steps. In addition to these groups, there are other migrants who face equally significant challenges and who have been much less visible within the scope of Welsh Government policies to date. We argue that this should change, and that attempts to mitigate the social consequences of immigration law should extend to all migrants who need protection, support, or improved access to rights and justice.

At times in this paper, we use the word ‘migrant’ as a catch-all term which includes refugees and asylum seekers. While there is a legal difference between the status of someone who comes to the UK to seek sanctuary from persecution and that of people in other immigration categories, we at times use the shorthand ‘migrant’ to encompass anyone without British nationality who has moved to the UK. Immigration law also impacts on children born in the UK to non-British parents without settled status, and some of these effects are discussed in this paper.

## 1.1 The use of devolved powers to mitigate immigration law

There are several ways in which the Senedd and Welsh Government can use devolved powers in respect of immigration. These include withholding consent to UK legislation, making representations to the UK Government on immigration matters, and making humanitarian commitments to migrants in Wales.

The Senedd has demonstrated its willingness to use its devolved powers when considering UK legislation. On 6<sup>th</sup> December 2021, the Welsh Government laid a Legislative Consent Memorandum<sup>2</sup> in relation to what was then the Nationality and Borders Bill. This resulted in the Senedd voting to withhold consent on aspects of the Bill relating to age assessments of unaccompanied asylum-seeking children, a social services function carried out in accordance with Part 6 of the Social Services and Wellbeing (Wales) Act 2014<sup>3</sup>. A vote to withhold consent requires the UK Parliament to consider whether to amend the relevant clauses or enact the Bill without Senedd consent. In this case, Parliament enacted the Bill without Senedd consent.

The Welsh Government has used its ability to object, influence, and highlight concerns in relation to UK policies to some effect. For example, in 2020-21, the objection of the Welsh Government and some MSs to the use of Penally Barracks to house destitute asylum seekers is likely to have had a role in the Home Office's decision to stop the use of the former army camp for this purpose. Speaking out where Westminster policies are unfair or inhumane is a vital role of devolved governments. It is essential, too, that there are influential voices in Wales prepared to identify and highlight at a UK national level where UK legislation has a differential impact in the Welsh context.

The Welsh Government has also adopted specific provisions for migrants where particular needs have been highlighted. In the update to its Refugee and Asylum Seeker Plan in January 2019<sup>4</sup>, the Welsh Government makes humanitarian commitments to refugees from their first day of arrival in Wales. While being clear that Wales is bound by the UK Government's asylum policy, the document outlines tangible actions that the Welsh Government intends to take within the scope of devolved matters.

The Refugee and Asylum Seeker Plan commits to ensuring that people seeking sanctuary can access necessary physical and mental healthcare; that they are provided with the information and advice that they need to integrate into Welsh society; that they are adequately safeguarded, including unaccompanied asylum-seeking children; and that they can access educational opportunities to rebuild their lives. A commitment is made to reduce the likelihood of refugees and asylum seekers falling into destitution, focusing mostly on the transition from asylum accommodation to sustainable accommodation following a successful asylum application.

The Plan also comments on reserved matters, over which the Welsh Government has no power. It sets out the view that improvements are needed to the standard of accommodation provided to asylum seekers, the level of financial support, and the funding provided to Welsh public services to support the integration of people seeking sanctuary. It seeks to work with the UK Government, to influence and monitor contracts, seek improvements, and to mitigate the worst effects of UK Government reforms to welfare benefits.

The Welsh Government also took a welcoming approach to EU migrants post-Brexit, making open statements about the value of EU migrants to Wales' communities and providing digital support for EU Settlement applications. Welsh Government funding for specialist immigration advice was extended well beyond the EU Settlement Scheme application deadline to ensure that late applications, appeals, and applications to move from Pre-Settled to Settled Status could continue.

While the UK Government has produced legislation that undermines and evades obligations to refugees under international law and has breached the rights of EU citizens through the unlawful EU Settlement Scheme<sup>5</sup>, it is a significant step for a small, devolved nation to take an openly inclusive and positive stance. Yet, while we applaud these commitments, significant policy gaps exist around the needs of some migrants in Wales who face major challenges which severely affect their quality of life. Why should we care?

## 1.2 Focus on refugees and asylum seekers

Much of Welsh policy development in relation to migration and migrant integration flows from the commitments made under the Refugee and Asylum Seeker Plan. This Plan strongly influences government thinking on migration and affects commissioning of work under various policy programmes. According to a progress report published in June 2020, the plan has encouraged a wide range of statutory bodies, projects, and programmes to integrate the needs of refugees and asylum seekers<sup>6</sup>.

The needs of refugees moving through the asylum system are unarguably great, and it is of no surprise that policy changes begin where there is significant and apparent need. It is essential, though, that we continue to widen the lens and identify needs which are less visible in existing policy and for which there is an even greater dearth of provision.

In the absence of an equally robust national strategic plan for supporting all legal categories of migrants in Wales, a skewed emphasis emerges in Welsh policy and debate. With the exception of extended support for EU migrants applying under the EU Settlement Scheme, considered responses to the needs of other migrant groups are largely absent. Little reference can be found in government policy to the needs of people arriving in the UK on different categories of visa, children born in the UK without British nationality, those with changing or precarious status, or those without documentation.

The Single Advice Fund (SAF), through which the Welsh Government funds 'free to the client social welfare information and advice services', provides funding which is vital to sustaining access to justice in Wales. Grants for immigration advice under the Fund are limited, and what is available is concentrated on the most basic advice, or on legal advice for asylum seekers and refugees, and for those making applications under the EU Settlement Scheme. This may be partly a consequence of limited availability of immigration legal provision, but more needs to be done to ensure that there is a well-funded, well-resourced infrastructure to enable all migrants in all parts of Wales to access high quality, specialist immigration advice.

The restricted scope of Welsh policy on immigration is also to the detriment of people seeking sanctuary in Wales. Policies and commitments from the Welsh Government tend to revolve around two stages of the refugee journey: arrival in the UK and seeking asylum, and after refugee status is granted. This ignores some key issues that impact on people seeking sanctuary. There is an urgent need for skilled legal assistance when the system does not recognise someone's right to seek refuge in the UK or when an asylum application is refused, and there is little in policy to address the needs of those who may have a need for humanitarian protection but who have entered the UK through another visa route.

A review of migration strategy in Wales reveals only a small amount of existing policy or planning in relation to immigration as a whole. This may stem from the fact that immigration is a reserved power. However, as with the Refugee and Asylum Seeker Plan, there is much that can be done to ameliorate the effects of UK national legislation and to set Welsh policies that commit to providing support, healthcare, social care,

employment, housing, awareness of rights, and access to justice. A comprehensive and broad migration strategy would provide impetus and secure the consideration of the rights of all migrants when projects, programmes, and policies are set across sectors. Although the Welsh Government is carrying out work on the development of a Migrant Integration Framework for Wales, it is unclear whether this will include all migrants, and there is as yet little in the way of tangible policy commitments that extend across sectors.

The Welsh Government recently commissioned a report into immigration legal advice services in Wales<sup>7</sup>. The terms of reference provided to the researcher, Dr. Jo Wilding, limited the scope to legal services for people subject to forced migration, a rationale explained by the fact that the work was initiated under the Refugee and Asylum Seeker Plan. However, this approach to the report's commissioning represents a missed opportunity to fully capture the detail of the situation facing Wales as an immigration 'advice desert'.

The sizeable gaps in brief were recognised by Dr. Wilding, who broadened the definition of 'forced migration' as much as possible. As a result, the report covered the legal advice needs of children who have been brought to the UK without immigration status, victims of domestic violence whose immigration status depends on their relationship in the UK, non-UK nationals in prison who face deportation and wish to resist it: all situations which include 'a measure of coercion'. The report notes the lack of logic in making a distinction between people seeking sanctuary and other migrants:

*First, it is not necessarily useful to distinguish between 'forced' and other migrants in this context. Several respondents criticised the primary focus on 'forced migrants' in this research. The distinctions are not as clear cut as might be expected, especially as people move between categories, with risks of exploitation arising because of people's immigration status. Welsh Government should therefore aim to provide a strategic lead in ensuring access to advice for all migrants who find themselves in a position of constrained choice, and with inadequate means to secure privately funded immigration legal advice.*

It is hoped that the Migrant Integration Framework that is in development at the time of writing will take a broader view. However, a well thought-out and comprehensive strategy for supporting all migrants in Wales is likely to be the best way of ensuring that national and statutory policies are responsive to the needs of all migrants at all stages of their journey and in whatever circumstances they find themselves.

In 2020, the Welsh Government published a Wales Position Paper on Migration<sup>8</sup>, setting out a 'united Welsh position on a number of migration key issues'. The paper, endorsed by statutory and independent bodies and charities representative of different sectors (arts, tourism, business, employment, higher education, health and social care, equalities, and local government), was essentially a response to the proposed new UK points-based immigration system. As such, it concentrated predominantly on Wales' economic and workforce needs. Nevertheless, this is an important broadening of scope. The paper refers to the need for a rights-based approach and reflects a willingness to explore how workforce shortages can be addressed through immigration.



In certain areas, the Welsh Government has made concerted efforts to look beyond asylum and forced migration to other groups of migrants with specific needs. Responses to modern slavery and trafficking, and to women subject to gender-based and sexual violence who have no recourse to public funds are notable here. The Equality and Social Justice Committee recently carried out an inquiry into gender-based violence and the needs of migrant women, resulting in a report published in October 2022<sup>9</sup>. The Welsh Government response to this was broadly positive, and amongst other steps has led to the forthcoming establishment of a 'last resort' fund for women escaping gender-based and sexual violence and who are subject to a No Recourse to Public Funds condition on their visa.

We believe that the migration agenda in Wales needs to build on these vital steps and be broadened to encompass all migrants in Wales. Welsh policy must apply the principles of fairness, equality, and justice to all, no matter what their immigration status, their category of visa, or their method of arrival in the UK.

### 1.3 Towards a broader approach

Below, we set out three key issues affecting people migrating to the UK and living in Wales. We explain why we believe that it is vital to consider their needs when exploring access to justice. It is important to note that these are not distinct 'categories' of migrants. Each group may include people who have arrived in the UK on various types of visa and people who have come to the UK seeking sanctuary from persecution. Some may be people who are 'newly arrived' and others those who have been in the country for some time. As the Windrush scandal demonstrated, immigration control and its harshest policies can affect people who have lived in Wales for most or all of their lives.

In highlighting these groups, we are not promoting people subject to these concerns as 'more important' than other groups of migrants in Wales. We are not suggesting that policy focus should move away from refugees and asylum seekers or concentrate solely on these groups. Our argument is that there are areas of significant need which are not sufficiently addressed in existing Welsh policy and that these are key examples. Rather than focusing on one or two labelled groups, it is vital that policy across sectors identifies and addresses need where and as it arises. Immigration legal provision, essential support, inclusion, and work on promoting rights and entitlements, should cover the needs of all migrants to Wales in all areas of Wales.

Due to the nature of the immigration system in the UK, people can move between categories or change visas. This can be by choice, or in an unplanned way, for instance when they are not able to renew a visa, if they flee domestic violence, following an unexpected crisis (e.g., the death of a partner), or if an application is refused. The headings below represent issues that may affect migrants who have come to the UK for a variety of reasons and in different ways. They are 'groups' only in the sense that they are affected by a common issue, which means that they face similar problems in living their lives, settling in Wales, and accessing legal advice and representation.

There are no 'good migrants' or 'bad migrants'. There are a number of routes by which people come to Wales and people do not always have a choice of which route they use. Many people arrive in Wales intentionally, but some find themselves here by a set of circumstances over which they have no control, and this may be the case whether they are coming as refugees or for some other reason. It is even possible for someone to arrive without initially knowing which country they are in.

People live complicated lives. When poverty, the need to be with distant family, war, oppression, and need are in the mix, lives become more complicated still. It should always be remembered that most migrants come to the UK in an orderly way, by regular routes, or with sought-after skills to offer. Many of these find work, settle, and lead productive lives with little need of assistance. Some, also with skills and hopes and much to give, find themselves through no fault of their own, without status and without support. This report is concerned with access to justice. As a result, it focuses on those who need more support and help, and who need access to good quality legal advice and representation.

## 2. People with no recourse to public funds

The No Recourse to Public Funds (NRPF) restriction is a pervasive and confusing element of UK immigration law, and one that has repeatedly been challenged in court and declared unlawful. Its complexity routinely causes people to be denied assistance to which they are legally entitled. Much of our welfare system – including devolved public services – derives from public funds: housing benefit, child benefit, attendance allowance, council tax reduction, social housing, universal credit... the list goes on. But bereavement allowance, retirement pension, and a list of others, are based on National Insurance contributions and are not public funds.

Children of households with no recourse to public funds generally do not have automatic eligibility for free school meals, but local authorities can provide them on a discretionary basis. The December 2021 Co-operation Agreement between Welsh Labour and Plaid Cymru announced the intention to provide universal free school meals to primary-aged children in Wales. This is being rolled out in a phased implementation to be completed by 2024. Until then, primary pupils in some years will receive universal free school meals, but eligibility for children with no recourse to public funds in years not yet reached by the roll-out, and secondary school pupils, will remain at the local authority's discretion.

All of this is incredibly confusing. The Home Office document<sup>10</sup> outlining what is and is not regarded as a public fund, and who is and is not eligible, in what circumstances (and sometimes depending on what date they arrived in the country), is 45 pages long. The Welsh Government NRPF guidance for local services is similarly long and complicated. It is hardly any wonder that statutory agencies, NGOs, and advisors who do not specialise in immigration law, are often accused of turning people subject to the NRPF restriction away in situations where they have a perfect right to access help.

### 2.1 Life with no recourse to public funds

Most people subject to an NRPF restriction have paid jobs. It is common for someone coming into the UK with limited leave to remain to be given an NRPF restriction on their visa. Whether arriving as a spouse, a student, or to work, people are expected to either maintain themselves and their families or to be supported by a family member. Often, people with NRPF do exactly that, but occasionally, like everyone, lives can hit difficulties and things can go wrong.

Working migrants, for example those in the hospitality and cleaning industries, were particularly affected by job losses during the COVID-19 pandemic<sup>11</sup>. Marriages can break down. People can find themselves trapped in a relationship with an abusive partner when they are reliant on that abuser not only for their right to stay in the UK, but for all their financial support. There is a government concession that allows people on a spousal visa who are subject to domestic violence to access benefits<sup>12</sup>, but they must be destitute first, and applying can depend on finding legal representation.

The NRPF restriction has a greatly disproportionate effect on women, disabled people, and children<sup>13</sup>. Single women with children and without access to childcare find it very difficult to work full time. Government-funded early education and childcare can be

accessed by people with an NRPF restriction, but hours are limited and vary according to the age of the child. Any busy parent who has dropped off their child at nursery and then had to rush back two and a half hours later to collect them, will understand the inadequacy of those free hours. Even the 30 hours of early education and childcare available for three- and four-year-olds under the childcare offer only allows for part-time work unless an alternative source of additional childcare is found.

People with no recourse to public funds are excluded from in-work benefits, leaving those on low incomes worse off than colleagues working the same hours. A high proportion of children affected by NRPF are not subject to the restriction themselves, but as it is parents who apply for benefits, it is their status that counts. As such, children of parents with no recourse to public funds are excluded from child benefit. This applies to British children as well as those subject to immigration control. A very high proportion of children whose parents have an NRPF restriction are from black and minoritised ethnic backgrounds<sup>14</sup>.

## 2.2 Unfair, unsafe, and unlawful

The NRPF policy has now been found to be unlawful five times<sup>15</sup>. In 2014 and 2018, challenges relating to the Public Sector Equality Duty were in the first instance upheld and in the second settled by the Home Office out of court. In May 2020, the policy was found by the Divisional Court to be in breach of Article 3 of the European Convention on Human Rights (Prohibition of Torture) and the common law of humanity, as it required people to become destitute before they could apply to have an NRPF condition lifted. In 2021, the concern was a failure to abide by the duty to safeguard and promote the welfare of children.

The UK Government's response to these legal challenges has been to make minor changes to the policy which do not substantially change its nature or its effects. As is evident from the repeated challenges, such changes have not resulted in a No Recourse to Public Funds policy that abides by UK and international law. In the latest legal challenge, in June 2022, the High Court found that the policy still fails to safeguard and promote the welfare of children.

The effects of a No Recourse to Public Funds restriction are broad and devastating. They include immediate impacts such as extreme poverty, lack of heating and cooking facilities, reliance on food banks, destitution, and homelessness. Then there are secondary impacts. Insecure accommodation can leave women, in particular, open to sexual exploitation and abuse. Poverty, insecurity, and crisis, lead to mental and physical ill-health and trauma. Poverty and substandard living conditions increase the risk of premature birth and infant death<sup>1617</sup> and can lead to developmental delay and behavioural difficulties<sup>18</sup> in children.

NRPF also places additional costs on local authorities who are already under strain. Because of their statutory duty under the Social Services and Well-Being (Wales) Act 2014 to children and adults who need care and support, local authorities often pick up the costs of interim accommodation and support when people, and particularly children, face destitution as a result of the policy. The cost to local authorities of NRPF across the UK is now around £64 million<sup>19</sup>. If the cost to Welsh local authorities is



proportionate to Wales' population share, then in Wales this would amount to approximately three million pounds. This does not include the additional financial burden that the policy places on the charitable sector and the health service, or the social costs of creating poverty and destitution<sup>20</sup>.

More evidence is needed about the impact of NRPF in Wales. The Welsh Government's NRPF guidance<sup>21</sup> encourages local authorities to take a positive approach in exploring what they can offer to people with no recourse to public funds, and in providing as much assistance as they can. In advocating an approach that seeks to prevent destitution, respond proactively to need, and focus on the person, the guidance cites both the Nation of Sanctuary vision and the Well-Being of Future Generations Act.

The guidance sets out recommendations for local authorities to ensure that they follow the principles of the Nation of Sanctuary Plan, and to prevent people with no recourse to public funds from "falling through the cracks of essential support, simply because of their immigration status". These include: matching financial support to asylum support rates where an assessment concludes that ongoing social services support is required; supporting families together; systematically collecting and sharing specific anonymised data that can be used to evidence cost, identify patterns, and advocate for change; developing effective working partnerships with other agencies; and assisting people to navigate legal and other routes out of destitution. Every local authority is asked to develop a Local No Recourse to Public Funds Pathway to set out commitments to people with NRPF, guide staff, and ensure continuing professional development.

There is no obligation on local authorities to follow these recommendations and it is unclear to what extent they steer local practice. Assessment is needed of individual local authority responses to people presenting with NRPF-related needs, and for evaluation of the quality and extent of data gathered, if it is collated, and how it is used.

While NRPF is a national UK policy, there is scope to provide support to people affected by it, using devolved powers. The example cited earlier in this report, of the 'last resort' fund currently being established by the Welsh Government for migrant women with NRPF escaping gender-based and sexual violence, demonstrates that there are steps that can be taken at a devolved level to ameliorate some of its worst effects.

Adequate access to good quality specialist legal advice is essential for people with no recourse to public funds: to make applications to lift NRPF conditions where possible, to apply to change status, and to challenge decisions. Accurate information about rights to financial support and services is also needed, for individuals and for professionals. Service providers and frontline workers require good quality training about the needs and rights of people with no recourse to public funds, and there needs to be a good range of well-networked voluntary and statutory sector support services to respond to crisis needs and offer ongoing support and pathways out of destitution.

Ultimately, there is a need to challenge the UK government NRPF policy at all levels, and to advocate and make the case for its removal. The Welsh Government and Senedd have a key role to play in making representations against the policy to the UK Government, and Welsh MPs can be proactive in opposing the No Recourse to Public Funds policy in Westminster, and in highlighting its negative impacts in Wales.

### 3. Undocumented migrants

In 2012, the then Home Secretary, Theresa May, announced the UK government's intention to create "a really hostile environment for illegal immigrants". Since then, restrictions have been placed on the right to rent, work, and receive public funds, for people without regular immigration status. Private landlords, employers, police officers, local authorities, and NHS staff, have all become de facto immigration officers. They are required, sometimes under threat of prosecution, to carry out checks on people's immigration status before allowing them to do basic, essential things: to rent properties, to take up jobs, to receive health care.

The stated intention was to make it extremely difficult for anyone without documentation to live in the UK. At every turn, they would be checked, challenged, exposed, made to feel unwelcome. The implication was that "illegal immigrants", under this pressure, would leave the UK. But there is no evidence that the rules have had that effect. In fact, since the hostile environment was introduced, removals and voluntary returns have dropped<sup>22</sup>, and net immigration has risen<sup>23</sup>.

The term "illegal immigrant" is inaccurate and misleading. Most people with undocumented status arrive through formal routes, with legitimate visas. Most have been in the UK for over five years<sup>24</sup>. They may have come as spouses and fled domestic abuse. They may have arrived as refugees, refused by a system well known for unfair and unevicenced decisions. They may be amongst the much-publicised (yet still victimised) 'Windrush generation'. They may be children, born or having lived most of their lives in Wales and the UK. People aren't "illegal": they acquire and lose Leave to Remain, sometimes managing to regularise their status only to become undocumented again.

The cost of an application for Leave to Remain in the UK is currently £1,048 per person for a family application, plus the health surcharge (£624 per year for an adult, £470 per year for a child)<sup>25</sup>. A biometric residence permit is charged at additional cost. With fees multiplied several times over for families with children, some are forced to pawn possessions, work long hours in poor conditions, or resort to desperate measures, in order to submit applications. These grants of temporary leave must be periodically renewed, as often as every 30 months for a family visa. It is no wonder that many are unable to keep up with the enormous and repeated cost.

The immigration system in the UK is notoriously complex and difficult to navigate. It is no secret that immigration advice provision in the UK is inadequate. Wales has been described as an "advice desert"<sup>26</sup>. There are few immigration advisers in Wales registered to give free legal advice and most offer it at only the most basic level. The few available routes to regularisation can take as much as twenty years. They are long and complex and difficult to achieve without good quality, consistent, legal advice.

The Welsh Government-commissioned report by Dr. Jo Wilding referred to in 1.2 above<sup>27</sup> estimates that there are approximately 5,400 people in Wales with a legal basis to remain, but who are nonetheless undocumented. With a fairer system and adequate legal advice, they could be working, contributing fully to society, fulfilling their

potential. The report highlights the need of people with irregular status for access to immigration legal advice.

As is the case across England as well, numerically the greatest need comes from those who are outside the scope of mainstream legal aid and outside the asylum system. This need is also geographically spread throughout Wales, whereas legal advice is mainly concentrated in the asylum dispersal areas. Yet provision in Wales outside the scope of legal aid is extremely limited. The consequence of this is that people remain in irregular status, without access to many services and entitlements, potentially suffering extreme poverty, destitution and homelessness, and are at risk of exploitation. This is clearly contrary to the public interest, regardless of the mode of entry to the UK, and avenues for provision of legal advice to this cohort should be explored.<sup>28</sup>

The population of Wales is projected to decrease, with the working-age population growing more slowly than its equivalent in England<sup>29</sup>. This presents a risk to Wales' workforce and is likely to have negative impacts on Wales' society and economic performance. In this light, it makes logical sense to assist undocumented migrants to regularise their stay and enable them to participate in economic life.

It is essential that the needs of undocumented people are placed firmly on the policy agenda in Wales. People with insecure immigration status are part of our communities, members of our families, a long-standing and vital part of society. If we believe in fair treatment for all, we must adopt an approach that includes and supports the most marginalised people in Wales and enables them to exercise their legal rights.

## 4. People on the ten-year route to settlement

Most migrants to the UK are given temporary Leave to Remain in the form of, for example, a work visa, a spouse visa, or a student visa. Above, we illustrated the high and repeated costs that people must keep up with in order to maintain their visa, and therefore their right to remain in the UK. Indefinite Leave to Remain (ILR), on the other hand, gives a person the right to stay in the country indefinitely, and is a pre-requisite for most applications for British citizenship (Settled Status as a refugee is another).

### 4.1 What is the ten-year route?

The ten-year route to settlement is one of the pathways to obtaining Indefinite Leave to Remain in the UK. The spouse, partner, or parent, of someone with British Citizenship or Settled Status, who cannot meet the full requirements for Indefinite Leave to Remain, can apply under this route as an Exception to the immigration rules if they cannot be removed from the UK because to do so would breach their right to private and family life<sup>30</sup>. They therefore have a legal, human rights basis to remain in the UK. (There are other categories of migrants who might apply under the ten-year route, but we focus here on private and family life applications.)

There are several reasons why a spouse, partner, or parent might not meet the requirements for Indefinite Leave to Remain. These could include: the person has not entered the UK on a spousal visa, they are applying as a parent or other family member, or their family income has at some point fallen below the Minimum Income Requirement (currently £18,600 per year). Because they are making a discretionary application under an Exception to the immigration rules, it is up to the Home Office whether they grant the application or not.

### 4.2 Evidencing ten years of leave to remain in the UK

The phrase 'ten-year route' refers to the number of years that the person must be in the UK before they can apply for Indefinite Leave to Remain. To do this, they must demonstrate an unbroken chain of leave and residence that lasts for the whole ten years. There are many things that can affect someone's ability to demonstrate a continuous ten years. Some are:

- A late application to renew a temporary visa at any time in the ten qualifying years means that the count starts again.
- Any period of undocumented status means that the count starts again.
- A long period spent outside of the UK within the ten qualifying years means that the count starts again.

The many reasons that a chain of residence and leave can be broken mean that the ten-year route can often, in fact, take a lot longer. Above, we set out how easy it is to fail to renew a visa and to slip into undocumented status. Applying on the ten-year route can feel like a dystopian game of snakes and ladders: working hard, getting



through years without recourse to public funds, scraping together the costs of visa application after visa application, only to fall back down to square one.

There have been some recent improvements. The government changed the rules in June 2022 to allow children born in the UK during an adult's ten qualifying years to be granted Indefinite Leave to Remain as dependents. This rule change introduced a shorter, faster route to settlement for children and young people who have spent half their life in the UK, enabling them to apply for settlement after five qualifying years instead of ten<sup>31</sup>. But five years in the life of a child is still a very long time, particularly when during that time their rights are curtailed, and their future is made uncertain. Many parents are still trapped in the ten-year route and the impact on families remains great.

## 5. Conclusion

Because immigration legislation is not devolved, it is impossible to look at immigration in Wales in isolation; it sits firmly within the context of UK law and policy. For over a century, the general trend of UK governments has been to successively tighten immigration law. Since 1996, there have been regular, and successively harsher, changes to UK legislation on immigration and asylum: automatically invalidating some asylum claims, restricting appeal rights, and introducing more punitive measures for migrants, asylum seekers, and UK nationals found to be in breach of the law.

Since the introduction of the “hostile environment”, immigration control pervades every part of Welsh life. Migrants face increasingly difficult routes to arriving and settling in the UK, and in securing the basics of a home, food, healthcare, and education.

The Welsh Government has demonstrated its willingness to use its devolved powers to mitigate, and in some cases challenge, some of the consequences of the UK government’s approach to immigration. This ranges from refusing consent to UK legislation to funding some legal advice. These actions, however, have been almost exclusively focused on refugees and asylum seekers, with some exceptions for time-limited concerns around EU migration, and responses to the significant challenges faced by migrant women subject to gender-based and sexual violence.

While these measures are welcome, there are other groups within Wales who are in a similarly insecure position and whose circumstances are not being adequately addressed. They are much less visible – some almost invisible – in Welsh Government policy. In this paper, we have highlighted some of the challenges faced by the following three groups:

- People with no recourse to public funds
- Undocumented migrants and people with insecure immigration status
- People on the ten-year route to settlement

We urge the Welsh Government to broaden its progressive humanitarian approach to proactively include the above groups, and to consider the needs of all migrants in need of support, protection, and specialist services in Wales. This would bring Welsh policy into far better alignment with the goals of the Nation of Sanctuary and the Well-Being of Future Generations Act. It would help Wales to comply more fully with international human rights obligations and would better reflect and respond to the reality faced by many migrants in Wales.

Avoiding destitution, supporting people on the route to settlement, and assisting people to acquire and retain secure immigration status makes good social and financial sense. It will contribute to a prosperous, resilient, healthier, more equal, more cohesive, culturally vibrant, and globally responsible Wales, and it will “help us create a Wales that we all want to live in, now and in the future<sup>32</sup>.”

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