



European Union (Withdrawal) Bill Briefing Committee Stage, House of Commons Protection and promotion of children's rights

Withdrawal from the EU is the most fundamental constitutional change to the UK for a generation. As the UK prepares to leave the rights framework of the European Union, it is for parliament to ensure that vital rights for children are protected and continue to be promoted. As organisations speaking for children and young people, we believe that this Bill provides the opportunity to affirm the UK's role as a global leader and advocate for children's rights.

The Withdrawal Bill intends to bring existing EU legislation into UK law. In doing so, we must ensure that the fundamental rights of children are not diluted as a result of this process.

With our exit from the EU, the UK plans to no longer be party to the EU Charter of Fundamental Rights and will not automatically benefit from the children's rights protections that exist within the EU legal framework. For example, The Treaty of Lisbon introduced an objective for the EU to promote the protection of the rights of the children,¹ and the Charter of Fundamental Rights guarantees the protection of rights of the child by EU institutions, as well as by EU countries when they implement EU law (Article 24). The best way to ensure that these rights are maintained after Brexit is to enshrine the UNCRC in UK law.

Amendments

These amendments seek to preserve children's rights in the UK on withdrawal from the EU. The amendments move for full incorporation of the UNCRC with child rights impact assessments to be undertaken on future law and policy developments, to a de minimis protection of children's rights during the period of withdrawal.

¹ [Article 3\(3\)](#) Treaty on European Union

Amendment NC34

To move the following Clause -

“United Nations Convention on the Rights of the Child

(1) On exit day and on any day afterwards, a public authority must act in a way which is compatible with—

- (a) Part I of the United Nations Convention on the Rights of the Child, and
- (b) the Optional Protocols of the UNCRC to which the UK is a signatory state.

(2) So far as it is possible to do so, on exit day and on any day afterwards, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with—

- (a) Part I of the United Nations Convention on the Rights of the Child, and
- (b) the Optional Protocols of the UNCRC to which the UK is a signatory state.

(3) On exit day and on any day afterwards, a Minister of the Crown must, when exercising any function relating to children, have due regard to the requirements of—

- (a) Part I of the United Nations Convention on the Rights of the Child, and
- (b) the Optional Protocols of the UNCRC to which the UK is a signatory state.

(4) A Minister of Crown shall undertake and publish a Child Rights Impact Assessment if the function relating to children under subsection (3) entails any of the following:

- (a) formulation of a provision to be included in an enactment,
- (b) formulation of a new policy, guidance or statement of practice, or
- (c) change or review of an existing policy guidance or statement of practice

This amendment would require Ministers and public authorities, from exit day onwards, to act in such a way as to comply with the United Nations Convention on the Rights of the Child, and the optional protocols to which the UK is a signatory state.

Amendment 148

Clause 4, page 2, line 47, at end insert—

(1A) Rights, powers, liabilities, obligations, restrictions, remedies and procedures under subsection (1) shall include directly effective rights and obligations contained in the United Nations Convention on the Rights of the Child.

This amendment would seek to preserve after exit from the EU any rights or obligations arising from the United Nations Convention on the Rights of the Child which applied in UK domestic law by virtue of its membership of the European Union.

Amendment 149

Clause 7, page 6, line 18, at end insert—

“(g) make any provision which is not compliant with the United Nations Convention on the Rights of the Child.”

Amendment 150

Clause 9, page 7, line 8, at end insert—

“(e) make any provision which is not compliant with the United Nations Convention on the Rights of the Child.”

These amendments would seek to bar Ministers from making regulations under clause 9 which are not compliant with the United Nations Convention on the Rights of the Child.

Why are these amendments important?

The UN Convention on the Rights of the Child (UNCRC) is a broad treaty of rights, which provides comprehensive protection for children’s social, economic, cultural and civil rights. Whilst the UK is a signatory of the UNCRC, it is not enshrined in domestic law.

EU legislation, policy and case-law developments have substantially improved the landscape for children across a diverse range of areas, including: criminal and family justice, non-discrimination, child trafficking, sexual exploitation and health and safety. The UNCRC is the touchstone for the development of European children’s law², and the Commission has adopted the language of the UNCRC in all legislation and policy relating to children. The language of children’s best interests, and the need to consider a child’s welfare has been developed in the UK context.

At the minimum, the proposed amendments ensure that in the immediate future, no legislative changes will be enacted without parliamentary scrutiny that are inconsistent with the UNCRC for the withdrawal period (amendments to clause 7 and 9). However, as EU law has children’s rights embedded throughout, the permanent requirement to act compatibly with the UNCRC is the best way to ensure that this protection continues beyond withdrawal – for this reason an amendment is also proposed which moves for full incorporation of the UNCRC into UK law.

² See the Fundamental Rights Agency, Handbook on European Law on the Rights of the Child, 2015

Examples of children's specific rights, or examples where we feel children's rights should be appropriately considered as the UK leaves the EU, include:

- Where alterations to public procurement regulations are made and impact on the provision of residential and foster care for children looked after by the State;
- The terms of any new trade deals insofar as they may have affect children's health and safety or their rights to receive health, education and other essential support services free of charge at point of need;
- The effect on children's present and future health and wellbeing of changes to environmental standards and protections;
- Decisions related to the provision of benefits, and the impact on families (such as legal aid, the restriction of child benefit and the decision to freeze benefits).

As drafted, the Withdrawal Bill removes from UK law the European Charter of Fundamental Rights, and proposes that "fundamental rights and principles" are considered in place of the Charter when implementing case-law or legislation that refers directly to it after exit day³. However, there is no further information on what these fundamental rights would be, nor any clarity as to whether the development of children's rights envisioned in EU law would be considered to be fundamental rights and principles. In the absence of any clear definition, further integration of the UNCRC into UK law would provide the framework for these fundamental rights for children.

Case study: EU family justice

Of all children born in the UK in 2016, nearly 70,000 have at least one parent from another EU Member State.⁴ Approximately 13% of these "international relationships" break down (over 130,000 per year), leading in many cases to disputes over child contact, custody and maintenance. The EU has put in place clear rules in the form of the Brussels *I/bis* Regulation⁵ and the Maintenance Regulation⁶ to ensure that such decisions are automatically enforceable should any of the parties live in another Member State. This provides certainty, as well as emotional and financial security for children and their parents, and ensures the rapid return of children in cases of parental child abduction.

The Brussels *I/bis* Regulation ensures respect for the fundamental rights of the child as set out in Article 24 of the EU Charter of Fundamental Rights of the European Union (para 33). This is supported by specific obligations to safeguard

³ House of Commons, European Union (Withdrawal) Bill briefing paper, 1 September 2017

⁴ Office for National Statistics, 'Dataset: Parents' Country of Birth: 2016' (ONS, 24 August 2017)

⁵ Regulation (EC) 2201/2003 on concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility, [2003] OJ L338/1

⁶ Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations [2009] OJ L 7/1

the child's best interests and their right to be heard in accordance with Articles 3 and 12 UNCRC respectively.⁷ For instance, the Regulation requires that orders may not be recognised in another Member State if a child has not been given the opportunity to be heard (Articles 23(b) and 41(2)(c)). Similarly, the best interests of the child principle guides all decisions relating to cross-border child protection proceedings (Article 20).

EU law regulating cross-border family disputes provide stronger protection for children's rights than alternative private international instruments which may come into play following Brexit precisely because of its explicit reference to the EU Charter and the UNCRC. An explicit obligation to ensure due regard for the UNCRC would maintain a strong level of protection in this area post Brexit in the event that the UK reverts to the private international law regime that governs this area for non-EU Member States.

Devolved nations

Currently, Wales, Scotland, and Northern Ireland have strengthened their laws on children's rights and protection. Since 2012, public authorities in Wales have had a duty to give due regard to the UNCRC and routinely undertake Child Rights Impact Assessments in proposing legal and policy change.⁸ In Scotland, Ministers must consider steps to secure further or better implementation of the UNCRC;⁹ and in Northern Ireland, the best interests of children must be determined in accordance with the UNCRC.¹⁰ The amendments would:

- Strive to ensure that children's rights protection is standardised across the UK on withdrawal.
- At a minimum, reduce the potential of the additional powers in the Withdrawal Bill to undermine the children's rights measures within the devolved nations.

Ensuring children's rights are central

In September 2017, UNICEF published a report setting out the progress made on children's rights in the UK¹¹. This established that while much has been achieved, there are still considerable weaknesses in the assessment of the impact of children's rights on law and policy, with no Bill having undergone a child rights impact assessment. Within this context, and with the knowledge that much of our existing protection is embedded in the law and policy that stems from the EU, having regard to the UNCRC offers the best protection available for our children. The example from

⁷ The obligation to ensure that the Regulation is interpreted in compliance with the UNCRC is reinforced in the recast version of the Brussels *Ibis* Regulation which the UK has so far opted into.

⁸ The Rights of Children and Young Persons (Wales) Measure 2011

⁹ Children and Young People (Scotland) Act 2014

¹⁰ Children's Services Co-operation Act 2015

¹¹ Unicef UK Briefing 'The case for a child rights impact assessment in England'

Wales demonstrates that embedding this commitment within domestic law does not create too onerous a burden for law-makers.

Case Study: General Data Protection Regulation

The right to be forgotten is set out in the General Data Protection Regulation (GDPR), an EU regulation that comes into effect in the UK from April 2018 with particular protection for children. It will allow people the right to be forgotten online, giving them the tools to permanently erase social media profiles, user accounts and pictures they or others have posted. It is particularly important for children who are growing up in an online world, and who often have little understanding or control of the data they share. However, websites, and marketing view this information as helpful in targeting their adverts.

Following Brexit, the UK may come under pressure to review the GDPR to allow targeted advertising. A free trade agreement may require greater freedom to retrieve personal data, particularly where this is shared online. Any changes may take the form of unscrutinised legislation in the two year withdrawal period, or through a Bill at a later stage. Without a children's rights framework to protect them, there would be no requirement to consider the particular need to protect children online, or produce any assessment of the impact on them prior to making amendments to the GDPR.

Questions to the Minister

- Does the Minister believe the UK should provide a moral lead in the world on children's rights after Brexit?
- What proposals does the Government have for ensuring that legislation and case-law brought into national law after withdrawal reflects the rights of the child?
- How far does the Minister consider that children's rights will be protected after withdrawal as a fundamental right or principle, given that the UN Convention on the Rights of the Children has not been incorporated into domestic law?

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