



European Union (Withdrawal) Bill

Committee Stage, House of Lords

Protection and promotion of children's rights

Withdrawal from the European Union (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 and experts 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 the Bill currently stands, the UK will no longer be party to the EU Charter of Fundamental Rights and children will not automatically benefit from the rights protections that currently exist within the EU legal framework, even where EU derived law is being applied.

The Bill grants broad powers to Ministers to amend EU derived law in line with domestic priorities. Without an explicit commitment to uphold the fundamental rights of children, there are no guarantees that the respect for children's rights will be held in due regard and sustained by future governments when amendments are made to statute as a result of our departure from the EU.

We would recommend that Peers support the amendments set out in this briefing, which would require Ministers and public authorities to have due regard to the UN Convention on the Rights of the Child (UNCRC) when implementing, amending, or repealing any laws necessitated by our withdrawal from the EU and in current areas of EU competence following Brexit. The Government has previously stated that it takes 'children's rights extremely seriously' and 'will ensure that we establish the

best approach to them in both the negotiations and our own domestic law.¹ These amendments will ensure that they are held to account for this commitment.

How are children's rights currently protected?

At an EU level, three legislative mechanisms operate in conjunction with one another to ensure, in principle, a strong level of children's rights protection when EU law and policy is being developed, applied and interpreted. These mechanisms include:

- The European Convention on Human Rights (ECHR)
- The EU Charter of Fundamental Rights (particularly Article 24)
- The UN Convention on the Rights of the Child (UNCRC)

These ensure that measures enacted at EU level, whether or not they directly target children, are interpreted and applied by Member States in a manner that is consistent with international children's rights standards. The EU has also made a constitutional commitment (in Article 3(3) of the Treaty on the European Union) to protect the rights of the child in all EU activities affecting children.

The Data Protection Regulation (GDPR)

The GDPR sets out in the preamble that data protection is a fundamental right, and makes specific recommendations in respect of children. It confirms their right to be properly informed, because "children merit specific protection, any information and communication, where processing is addressed to a child, should be in such a clear and plain language that the child can easily understand." Without this protection, UK children are likely to be specifically targeted by marketing – food, apps, online communities and games. Children risk leaving their digital footprint throughout their lives and having their data collected and stored. Significant changes to data protection, without the underpinning of children's rights will leave them more vulnerable, over a longer period of time, than adults.

Domestically, no explicit constitutional commitment to children's rights exists at a central UK government level, the level at which most EU legislation will be amended or repealed post withdrawal, through Henry VIII powers with limited parliamentary oversight. Whilst the UK has ratified the UNCRC, the Convention has not been fully incorporated into UK law and there are no legal or financial sanctions for non-compliance with its principles and provisions. The UNCRC is a broad treaty of rights, which provides comprehensive protection for children's social, economic, cultural, political and civil rights. The Human Rights Act 1998 will offer some important

¹ Oral question to Robin Walker, 2nd November 2017 <https://hansard.parliament.uk/Commons/2017-11-02/debates/2434200C-ADCA-4680-92E4-37697BC162FC/ChildrenSRights>

protection for children post Brexit but its provisions do not reflect the full scope of rights covered by the UNCRC.

In England, children's rights are protected in domestic legislation through, but not limited, to the following:

- The Children Act 1989 and 2004 set out a range of duties to safeguard and promote the welfare of children.
- Section 11 of Children Act 2004 specifically obliges organisations to discharge their functions having regard to the need to safeguard and promote the welfare of children.

Across the UK, the following commitments apply in legislation:

- The Human Rights Act 1998 incorporates the European Convention on Human Rights into UK law and provides protection for children's civil and political rights. Specifically their right to private and family life (Article 8), their right to be protected from inhuman or degrading treatment (Article 3) and their right to a fair trial (Article 6).
- Section 55 of the Borders, Citizenship and Immigration Act 2009 requires that immigration authorities discharge their functions having regard to the need to safeguard and promote the welfare of children who are in the UK.

Whilst these, albeit partial but longstanding, commitments to children's rights in domestic law are to be welcomed, they do not cover the full range of children's rights entitlement currently regulated by the EU, and there are significant inconsistencies and shortcomings in the way that they are interpreted in practice. As such, the current UK domestic framework will not ensure that when the UK leaves the European Union equivalent, strong protections for children will continue.

At a devolved level there has been some important legal advances in protecting children's rights:

- In Wales, the Rights of Children and Young Persons (Wales) Measure 2011 imposes a duty on the Welsh Ministers to have due regard to the UNCRC and its first and second Optional Protocols when exercising any of their functions. To ensure compliance with the due regard duty the Welsh Government routinely carries out Child Rights Impact Assessments on proposals for Welsh law or policy that directly or indirectly affect children.²
- In Scotland, the Children and Young People (Scotland) Act 2014 imposes a duty on Ministers to keep under consideration whether there are any steps which they could take which would or might secure better or further effect in

² See Simon Hoffman, 2015, [Evaluation of the Welsh Government's Children's Rights Impact Assessment, Welsh Government](#)

Scotland of the UNCRC requirements, and if they consider it appropriate to do so, take any of the steps identified by that consideration. The Scottish Government also undertakes Child Rights and Wellbeing Impact Assessments on proposed legislation and policy to identify, research, analyse and record the anticipated impact of any proposed law and policy on children's human rights.³

- Northern Ireland has a general statutory equality obligation under the NI Act 1998 and its 2015 Children's Services Co-operation Act which requires best interests to be defined with regard to the UNCRC.

However, although such developments are extremely welcome, these devolved children's rights mechanisms offer limited protection for children in the context of EU withdrawal, especially since (as the Bill currently stands) much of EU law affecting children can be repealed or amended through the use of delegated powers at a centralised level, with little parliamentary scrutiny. It is also unclear at present whether policy areas affecting children, which currently fall under EU competence, will remain at UK Government level or be subsequently devolved to the Scottish, Welsh and Northern Ireland governments.

Amendments

The following amendments seek to preserve children's rights in the UK on our withdrawal from the EU through two mechanisms.

The first is to ensure that any changes made by the Government using the Henry VIII powers granted by the Withdrawal Bill, are made with due regard to the UNCRC.

Amendment

Clause 7, page 6, line 25 at end insert-

(g) make any provision without due regard having been given to all parts of the United Nations Convention on the Rights of the Child ratified by the UK.

Clause 9, page 7, line 17, at end insert –

(e) make any provision without due regard having been given to all parts of the United Nations Convention on the Rights of the Child ratified by the UK.

These amendments would seek to ensure that due regard has been given to the UNCRC when deciding to make regulations under clause 7 and 9.

The Bill as it stands ensures that additional delegated powers afforded to Ministers to amend the statute book prior to leaving the EU, cannot disregard the Human

³ See Together (Scottish Alliance for Children's Rights), 2016, [State of Children's Rights in Scotland](#)

Rights Act 1998, and that Ministers must make a statement setting out how such statutory instruments have due regard to the Equality Act 2010.⁴ These protections are limited for children, not allowing full assessment of the broad range of their rights under the UNCRC, and in terms of the Equality Act 2010, not protecting children as a group, and not defining age discrimination as against those under 18.

The scope of protection of children's rights derived from the EU Charter of Fundamental Rights and from the UNCRC is much broader and universal. The lack of an explicit duty to have due regard for the full range of rights contained in the UNCRC and the Charter would result in a loss of rights and protections which children currently enjoy. The proposed amendments ensure that no legislative changes that result from UK withdrawal from the EU will be enacted without due regard to the UNCRC.

The second amendment is an explicit provision requiring Ministers and other public authorities to have due regard to the UNCRC in introducing, implementing, amending or repealing any laws which fall within areas of EU competence immediately prior to exit day. This is necessary to in order to protect the full range children's rights after UK withdrawal from the EU.

Amendment

To move the following clause –

“United Nations Convention on the Rights of the Child

On exit day and on any day thereafter, in carrying out duties and functions that were within the competence of the EU before exit day, a public authority or Minister of the Crown must have due regard to all parts of the United Nations Convention on the Rights of the Child ratified by the UK.”

This amendment would require Ministers and public authorities, from exit day onwards, to have due regard to the UNCRC in areas over which (immediately prior to exit day) the EU is competent to act.

Children's rights are very real, and do not simply exist in the abstract at EU level. Areas of law that are currently within EU competence and where children's rights are protected include:

- Data protection under the General Data Protection Regulation
- Paediatric medicine clinical trials through the Paediatric Medicines Regulation 2006

⁴ Clause 22 <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0079/18079.pdf>

- Consumer protection, including food labelling and TV advertising;
- Equal access to education, health care and other social rights for all children including migrant children
- Cross border EU family law through Brussels IIa

New Trade Agreements: will they uphold children's rights?

Under current EU law, the free circulation of goods and services between the Member States have to be balanced against the need to subject such goods and services to sufficient scrutiny with a view to protecting the welfare of children who may be exposed to them. This balancing of priorities has been achieved in the context of DVD and other media exports, for instance, by reference to children's rights to be protected against harmful media content under Article 17 of the UNCRC (*Dynamic Median Vertriebs GmbH v Avides Media AG* (Case C-244/06) [2008] ECR I-505). As the UK embarks upon new trade deals, particularly if it withdraws from the Customs Union, there needs to be a comparable mechanism in place to ensure that any new trade deal includes sufficient safeguards for children who will be exposed to foreign products and services.

As the Bill currently stands, the UK will also not have to abide by the Charter of Fundamental Rights once we leave the EU.⁵ This means without a duty to have due regard to the UNCRC, there will be no mechanism to ensure that EU-derived law continues to operate in a way that provides sufficiently comprehensive and clear framework for protecting children across all jurisdictions.

Questions to the Minister

- Does the Minister accept that the current domestic framework for children's rights offers insufficient coverage and protection for the full range of issues affecting children which are currently governed by EU law?
- How far does the Minister consider that children's rights will be protected after EU withdrawal as a fundamental right or principle, given that the UN Convention on the Rights of the Child has not been incorporated into UK domestic law?

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⁵ We believe the Charter of Fundamental Rights should also be retained. See separate briefing which sets out the importance of the Charter.