

Refugee & Migrant Children's Consortium

Immigration and Social Security Co-ordination (EU Withdrawal) Bill Committee Stage, House of Commons Children's Rights Impact Assessment Briefing

Summary

In November 2018, the Minister for Children reiterated the government commitment made in 2010 to 'give due consideration to the UNCRC articles when making new policy and legislation'¹, reaffirming 'the value that this Government places on the UNCRC'.² In light of this firm commitment, RMCC members were disappointed to see that no assessment of the impact on children's rights of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill was undertaken prior to its being published. The Bill, will repeal freedom of movement and associated rights and provide a framework to deliver the future immigration system, with a significant impact on children. The Migration Observatory have estimated that there are currently 1.2 million EU parents and 900,000 EU children residing in the UK³.

In addition to this, Clause 4 of this Bill gives Ministers extremely broad 'Henry VIII' powers to make regulations that modify legislation regarding free movement and the wider immigration system. Determining immigration policy through the Immigration Rules allows the Home Office to unilaterally change immigration rules with little to no scrutiny, input from civil society, assessment of impact on children's and other vulnerable people's rights or parliamentary approval. With the powers under Clause 4, we fear that the Bill grants Ministers additional means by which to create immigration policy that negatively impacts on children and young people who are subject to immigration control without appropriate checks and balances. It is vital that in the development of new immigration law and policy due regard is paid to the impact on children and steps taken to ensure children's rights are protected.

Case Study

Sara was a 25 year old single mother who came to the UK as a child but who was living with uncertain status. She was being supported by a London local authority and receiving a subsistence payment of £35 per week. Her daughter Helen was ten years old and had lived all of her life in the UK. She was therefore eligible to register as British under the British Nationality Act but only if her mother could afford the fees. As there is no fee waiver for citizenship application, this was impossible for her on the limited amount of support she was receiving – in April 2018 the fee for citizenship registration applications had increased to £1,012 - and so her daughter was left undocumented.

In late 2018, Baroness Lister highlighted that no child rights impact assessment had been published of the increase to fees for children's citizenship applications, asking:

'How can the Government meet their duty under the UN Convention on the Rights of the Child to give primary consideration to the best interests of the child when they fail to provide that assessment of the 'huge' registration fee, to quote the Home Secretary? It effectively denies children born in this country their statutory right to citizenship, thereby undermining their sense of security, identity and belonging, and potentially creating a new Windrush generation.'

The government response was to state that it has assessed 'the impact of fee changes not on the individual applicant, but rather on the UK as a whole', completely disregarding the commitment to consider children's rights directly.¹ Helen is an example of child whose future stability and security has been directly and negatively impacted by this approach.

Children's Rights

The UK Government asserted throughout the passage of the EU Withdrawal Bill last year that children's rights were fully protected under domestic law and that the UK's commitment to the United Nations Convention on the Rights of the Child (UNCRC) already means that children's rights are considered when formulating policy. However the RMCC believe this commitment is not translating into practise⁴.

For example, between 2010 and May 2017, only five Government Bills were considered for their potential impact on children's rights, and four out of the five originated in the Department for Education (DfE), which is where the Children's Minister is based. All five were used to outline their respective policies and, by focusing on both ECHR and CRC requirements, assert their human rights merits through compliance statements. However our members have argued that these were narrations, rather than examinations of policy⁵. Considering the best interests of the child should not be a secondary consideration for Governments, the merits of evaluating policy through this framework means legislation can be strengthened and children are less likely to fall through the gaps⁶.

The Children's Rights Alliance have stated that England is falling behind the rest of Great Britain in the way in which it embeds children's rights in law and policy. Legislation in Scotland requires public authorities to report on the steps they have taken to "secure better or further effect" of children's rights⁷In Wales, the Rights of Children and Young Persons (Wales) Measure 2011 imposes a duty on all public officers to have due regard to children's rights as expressed in the UNCRC when exercising any of their functions. To achieve that obligation, since 2012 the Welsh Government routinely undertakes Child Rights Impact Assessments on proposals for Welsh law or policy which will affect children directly or indirectly.⁸ By comparison there is no explicit constitutional commitment to children's rights exists at a central UK government level.

What is a Children's Rights Impact Assessment (CRIA) and why is this needed?

A CRIA is a child-focused human rights impact assessment. A CRIA involves examining laws, policies, and changes to public services to determine their impact on children, and whether they comply with and indeed further the implementation of the UNCRC⁹. The impact assessment considers the direct or indirect impact of domestic legislative, policy or administrative decisions on either an individual child, specific groups of children, or children generally – often with a focus on the most vulnerable or marginalised. These impacts can be short, medium or long-term.

We were pleased to see the Department of Education recently re-assert this commitment to a more comprehensive children's rights framework needed to be used by Government departments when formulating policy¹⁰. In November 2018, the Department launched a comprehensive children's rights training package to be available to civil servants across the Government as well as recommending that CRIA's were undertaken on all new government policy. Despite this commitment from Government, a Children's Rights Impact Assessment was not undertaken for the Immigration and Social Security Bill. This effectively means that when developing one of the most historic repealing of citizenship rights in history the government has not comprehensively considered the impact on children.

The fundamental purpose of this Bill is to repeal freedom of movement and that most of the changes will need to be exercised through changes to the Immigration rules. Without a Children's Rights Impact Assessment, the RMCC cannot fully analysis or predict how this bill will effect 900,000 EU children currently residing in the UK. And without a commitment to have due regard to the UNCRC and undertake Children's Rights Impact Assessments in the development of future immigration policy, we cannot be sure that the children's rights will not be under threat. We would encourage MPs to support both these amendments.

Amendment 24

*** Clause 7, page 5, line 33, leave out subsection (6) and insert—**

“(6) This Act may not come into force until a Minister of the Crown has undertaken and published a Child Rights Impact Assessment of the Bill.

(6A) Section 6 and this section come into force on the day a Minister of the Crown publishes the Child Rights Impact Assessment under subsection (6).”

Amendment 25

*** Clause 4, page 3, line 31, at end insert—**

“(11) When exercising functions under Clause 4 relating to children and families the Secretary of State must—

(a) have due regard to the requirements of—

(i) Part I of the United Nations Convention on the Rights of the Child, and

(ii) the Optional Protocols of the UNCRC to which the UK is a signatory state.

(b) undertake and publish a Child Rights Impact Assessment.”

Member's explanatory statement

This amendment would place a duty on the Secretary of State to have due regard to the UNCRC when making statutory instruments using the Henry VIII powers in Clause 4. It will also require them to undertake and publish a CRIA for each change to or introduction of statutory instruments or regulations under Clause 4.

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¹ Written statement to the House on 6 December 2010, by Sarah Teather, then Minister of State, Department of Education

³ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2018-11-20/HLWS1064/>

⁴ Written Ministerial Statement for Universal Children's Day: Written statement - HCWS1093:

<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-11-20/HCWS1093/>

⁵ <https://www.tandfonline.com/doi/full/10.1080/13642987.2018.1558989?scroll=top&needAccess=true>

⁶ <https://www.lawgazette.co.uk/commentary-and-opinion/upholding-childrens-rights-post-brex/5068526.article>

⁷ Section 2, Children and Young People (Scotland) Act 2014

⁸ See Simon Hoffman, 2015, Evaluation of the Welsh Government's Children's Rights Impact Assessment, Welsh Government at

<https://cronfa.swan.ac.uk/Record/cronfa30963v>

⁹ https://downloads.unicef.org.uk/wp-content/uploads/2017/09/Unicef-UK-Briefing_Child-Rights-Impact-Assessment_England_September-2017.pdf?_ga=2.231235804.2146293039.1550061260-1923999841.1548158992

¹⁰ http://clientarea.skillsset.co.uk/DfE/Childrens%20Rights_v0.3%20-%20Storyline%20output/story_content/external_files/CRIA%20template.pdf