



## European Union (Withdrawal Bill)

**Second reading, House of Lords, Tuesday 30<sup>th</sup> January**

### **The 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 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 in UK law. In doing so, we must ensure that the fundamental rights of children are not diluted as a result of this process. Without a renewed commitment to the fundamental rights of children, there are no guarantees that the respect for children's rights will be shared by future governments, and held in due regard when amending the statute book as a result of our departure from the European Union. **We believe that an explicit provision, requiring Ministers and other public officials to have due regard to the UN Convention on the Rights of the Child (UNCRC) in implementing, amending or repealing any laws is necessary in order to protect children's rights post Brexit.**

### **How are children's rights currently protected?**

At an EU level, three 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
- The UN Convention on the Rights of the Child

These ensure that measures enacted at EU level, whether or not they are directly targeted at 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 to protecting the rights of the child in all areas of law and policy affecting children. This means that any measures that are enacted have to be interpreted in a manner that is consistent with international human rights law (specifically the UNCRC) and with the Charter of Fundamental Rights (particularly Article 24).

Domestically, no explicit constitutional commitment to children's rights exist at central UK government level, the level at which most EU legislation will be amended or repealed post-Brexit, with (as the Bill currently stands) limited parliamentary oversight. Whilst the UK has ratified the UNCRC, it 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 Human Rights Act will offer some important protection for children post Brexit but its provisions do not reflect the full scope of the UNCRC.

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

- The Children Acts 1989 and 2004 set out a range of duties to safeguard and promote the welfare of children.
- Section 11 of Children's Act 2004 obliges some organisations to discharge their functions having regard to the need to safeguard and promote the welfare of children in particular contexts.
- The Children and Social Work Act 2017 (not yet in force) requires English local authorities to act in the best interests of children in their care.

Across the UK, the following commitments apply in legislation:

- 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.
- 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.

Whilst these commitments to children's rights in domestic law are to be welcomed, they do not cover the full range of children's 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 fall far short of the protections currently available to children under EU law once the UK leaves the EU.

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

- In 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.<sup>1</sup>
- 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 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.<sup>2</sup>
- Northern Ireland, for its part, 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 will be impaired by Brexit since much of EU law affecting children is likely to be repealed or amended through the use of delegated powers at a centralised level.

### **Why is this important?**

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 Rights Act 1998, and Ministers must make a statement setting out how such statutory instruments have regard to the Equality Act 2010<sup>3</sup>. Whilst these are important protections, they are limited for children. The Equality Act in particular does not prevent age-based discrimination towards children. The scope of children's rights in the EU through the framework of the Charter of Fundamental Rights and the UNCRC is much broader, universal and without a duty to have regard would result in a loss of rights and protections children currently enjoy.

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<sup>1</sup> See Simon Hoffman, 2015, [Evaluation of the Welsh Government's Children's Rights Impact Assessment, Welsh Government](#)

<sup>2</sup> See Together (Scottish Alliance for Children's Rights), 2016, [State of Children's Rights in Scotland](#)

<sup>3</sup> Clause 22 <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0079/18079.pdf>

## **The United Nations Convention on the Rights of the Child**

The Convention has 54 articles that cover all aspects of a child's life and set out the civil, political, economic, social and cultural rights that all children everywhere are entitled to. It also explains how adults and governments must work together to make sure all children can enjoy all their rights.

The Convention also includes a series of Optional Protocols. The UK has signed the first two Optional Protocols which refer to the involvement of children in armed conflict and the sale of children, child prostitution and child pornography.

**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 therefore protected 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 under care orders;
- The terms of any new trade deals insofar as they may 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.
- Data Protection – The General Data Protection Regulation
- Paediatric medicine/clinical trials – Paediatric Medicines Regulation 2006

## **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 to 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.<sup>4</sup> This means without a duty to have regard to the UNCRC, there be no mechanism to ensure that EU-derived law continues to operate in a way that provides a sufficiently comprehensive and clear framework for these rights. We believe that **an explicit provision, requiring Ministers and other public officials to have due regard to the UNCRC is necessary in order to sufficiently protect children’s rights post-Brexit. In particular, this is crucial with regard to:**

- **Amendments to laws that fall within EU competence**
- **Amendments to laws where Ministers use the delegated powers granted to them in the Withdrawal Bill**

#### **Questions to the Minister**

- Does the Minister accept that the current domestic framework for children offers insufficient coverage for the full range of issues currently governed by EU law?
- 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 Child has not been incorporated into domestic law?

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<sup>4</sup> We believe the Charter of Fundamental Rights should also be retained see separate briefing which sets out the importance of the Charter for children