



European Union (Withdrawal) Bill Briefing Second reading, House of Commons, Thursday 7th September

Children had no say in the EU referendum, but the result will have a profound impact on their lives, and the lives of future children and young people. For this reason, it is critical that during the passage of the European Union (Withdrawal) Bill, parliament considers the impact of the decision to leave the European Union on the rights, safety and welfare of children and young people and urges the Government to put the best interests of children first.

This briefing, which is supported by a range of organisations representing hundreds of thousands of children and young people across the UK, will address three key themes, and proposes two key amendments for debate in later stages of the Bill.

- 1. Protection and promotion of children's rights;**
- 2. Ensuring that cross-border mechanisms are in place to safeguard children and ensuring adequate structural funding to address inequalities;**

The Secretary of State for Exiting the European Union has said on numerous occasions that the European Union (Withdrawal) Bill is designed to ensure 'continuity'. Throughout each of the areas addressed in this briefing, we are seeking to ensure that the existing rights and protections children enjoy as members of the European Union continue as the UK exits the European Union.

1. 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.

Currently UK law lacks automatic protection of children's rights. As we leave the EU it is vital that we ensure that current and future governments would have to hold children's rights in due regard in future policy and legislative matters.

Whilst the Withdrawal Bill intends to bring existing EU legislation into UK law, without a renewed commitment to the fundamental rights of children, we risk children's rights being diluted or impinged as future governments look to correct and update the statute book in light of our departure from the EU.

With our exit from the EU, the UK will no longer be party to the EU Charter of Fundamental Rights and the promotion of children's rights that exists 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 children¹, 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. As the Bill currently stands, there are no plans to incorporate the Charter into UK law.

In 2016, the UN Committee on the Rights of the Child made key recommendations that the UK should:

- Introduce a statutory obligation at national and devolved levels to systematically conduct a child rights impact assessment when developing laws and policies affecting children, including in international development cooperation;
- Publish the results of such assessments and demonstrate how they have been taken into consideration in the proposed laws and policies.²

We recognise the commitment that has been made to embed the United Nations Convention on the Rights of the Child (UNCRC) into policy making, announced by the former Minister for Vulnerable Children and Families in response to amendments in the Children and Social Work Bill, and the continuing programme of actions around this. In particular the *“commitment to work with the Joint Committee on*

¹ Article 3, The Lisbon Treaty, <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-european-union-and-comments/title-1-common-provisions/4-article-3.html>

² Committee on the Rights of the Child, 'Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland,' <http://www.crae.org.uk/media/93148/UK-concluding-observations-2016.pdf>, p.3

*Human Rights on how to promote and embed good practice, including through the use of children's rights impact assessments.*³

However, there is no specific piece of legislation in UK law which enshrines children's rights. Children's rights are only currently protected in respect of actions taken by certain public authorities (s11 Children Act 2004) and where a court or children's services are considering their best interests (s1 Children Act 1989).

Children's Rights across the UK

Devolved administrations have made significant strides in establishing a national children's rights framework. In Wales, and in Scotland, acts of the devolved legislative assemblies have ensured that the UNCRC is taken into consideration. In Wales the 2011 Rights of Children and Young Persons Measure incorporates the text of the convention and provides both protection to children as well as public education. In Scotland, the Children and Young People (Scotland) Act 2014 requires public authorities to report every three years on the steps they have taken to implement the UNCRC. Post-Brexit, the UK should aim to be a standard bearer for children's rights.

Whilst these, albeit partial but longstanding, commitments to children's rights in law are to be welcomed, when the UK leaves the European Union, it is important that existing and future UK law reflects the principles and provisions of children's rights as set out in the UNCRC. A duty for Ministers to have due regard to the UNCRC will place them under a binding commitment to ensure children's rights and best interests are the guiding principle in every action affecting children, and that children's voices are heard and taken into account.

The Bill as it stands ensures that delegated powers afforded to Ministers to correct the statute book cannot disregard the Human Rights Act 1998. Whilst this is an important protection, the HRA only directly relates to children's rights in a limited way. As shown by the box below, the UNCRC was developed specifically with children in mind and is much broader in scope. It is crucial that the Bill ensures its principles and provisions cannot be disregarded.

The United Nations Convention on the Rights of the Child

The Convention has 54 articles and sets out the minimum standard on how children should be treated. It covers all aspects of a child's life and sets 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 has three Optional Protocols. The UK has ratified Optional Protocols which refer to:

³ Minister for Vulnerable Children and Families, Children and Social Work Bill 2017, 12th January 2017, HC 220

- The involvement of children in armed conflict, which ensures that action is taken to prevent under 18s being involved in direct hostilities.
- The sale of children, “child prostitution” and “child pornography”; which emphasises the need for increased public awareness about these issues and international cooperation.

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 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).

What would the suggested amendment achieve?

- Subsection (2) would ensure that Ministers are under a duty to have regard to the rights set out in the United Nations Convention on the Rights of the Child and optional protocols which the UK is signatory to, when exercising their functions.
- Subsection (3) and (4) would ensure that Ministers are under a duty to also undertake an assessment of the impact on children’s rights when developing new policies, guidance and legislation. The amendment takes steps to qualify where we think that this would be most appropriate i.e. when policies, guidance, or legislation relates to children and families. This would be achieved through a screening process.
- All parts of this amendment would apply to the delegated powers Ministers will be afforded under section 7 of the Bill, and for all relevant future policy development and legislation.
- This means that the UK will ensure a high-standard of children's rights protection.

Suggested amendment

In Clause 8, insert new sub-clause 2 -6 after line 30 –

(2) From the date of withdrawal ‘exit day’, Ministers of the Crown must, when exercising any of their functions, have due regard to the requirements of—

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

(3) In complying with the duty set out in subsection 2, Ministers must have regard to the need to undertake and publish a Child Rights Impact Assessment where making a decision which relates to children and families.

(4) A decision falls within subsection 3 where it relates to any of the following:

- (a) a provision to be included in an enactment*
- (b) formulation of a new policy, guidance or statement of practice*
- (c) change or review of an existing policy guidance or statement of practice*
- (d) secondary legislation, as so far as it is reasonably appropriate*

Questions to the Minister

- What safeguards will he ensure are in place to make sure that children’s rights are protected and promoted following the UK’s exit from the European Union?
- How he will ensure that delegated powers afforded to Ministers under section 7 of this Bill will be exercised in line with the United Nations Convention on the Rights of the Child?
- Whether he agrees that an outward looking, global Britain must take steps at home to make sure that our protection and promotion of children's rights is the gold standard, the world over?

2. Ensuring that cross-border mechanisms are in place to safeguard children and ensuring adequate structural funding to address inequalities

Cross-border cooperation for the purposes of safeguarding children

European legislation for the purposes of safeguarding children will be transferred into UK law, continuing to provide a vital legislative frame through which the UK can effectively tackle crimes such as child trafficking and child exploitation taking place both on and offline.

Clearly, though, the ability of law enforcement agencies and the courts to effectively detect and disrupt crime, and bring perpetrators to justice, requires more than a strong legislative framework; it requires cooperation.

From our collective experience, we know that the crimes affecting children are increasingly complex, with increasingly international elements. For example, the production and dissemination of child abuse material online is oftentimes international. Abuse may take place in one country, be hosted online in a second and be being viewed by abusers in a third. Clearly, in order to effectively tackle such crimes, police forces and the National Crime Agency need to be able to cooperate with their colleagues across the European Union through Europol and Eurojust.

Earlier this year, Europol released twenty images of objects and locations appearing in child abuse material in a public campaign to try to identify where this child abuse was taking place. The UK risks missing out on being party to these vital campaigns to keep children safe should we not remain a member of cross-border agencies.

Case study: Investigation into the suicide of Northern Irish teenager, Ronan Hughes.⁴

Ronan, 17, was exploited into sending intimate photos and subsequently blackmailed. When he did not pay ransom, these photos were shared with his friends, which led to his suicide in 2015.

The complexities of this 'sextortion' case meant that it has taken two years to bring the perpetrator - a Romanian national operating from Romania - to justice. The complexity of this crime meant that Police Service Northern Ireland, the National Crime Agency, Romanian law enforcement and Europol were involved in the investigation, which resulted in the perpetrator being jailed for four years.

In the four years leading up to 2013, the European Arrest Warrant had been used to extradite 57 suspects from the UK for child sexual offences, and in the same period

⁴ <https://www.theguardian.com/uk-news/2017/aug/29/blackmailer-plot-led-to-suicide-17-year-old-jailed-romania>

returned 63 suspected child sexual offenders to the country to face charges in the UK.⁵

Which agencies and agreements should we remain a member of?

As a minimum, the government should ensure that we remain a member of the following agencies and agreements:

Europol	Facilitates co-operation between the investigative authorities in the Member States with a view to preventing and combating serious organised crime, including criminal activities involving children.
Eurojust	The judicial co-operation body responsible for co-ordinating investigations and prosecutions across the Member States. Its activities primarily focus on organised criminal activity that crosses borders, particularly human trafficking.
European Arrest Warrant	A fast-track extradition procedure enabling the national judicial authorities of one Member State to secure the arrest and return of a person to their territory to answer charges of an offence. It is increasingly used to bring to justice perpetrators of crimes against children following their move to another Member State.
European Criminal Records Information System	It establishes an electronic interconnection of criminal records databases to ensure that information on convictions is exchanged between Member States in a uniform and speedy way. It also provides judges and prosecutors with easy access to comprehensive information on the criminal history of persons concerned, regardless of the Member State in which that person has been convicted in the past. The system therefore significantly reduces the possibility of offenders slipping under the radar by moving to another country.

Ensuring adequate structural funding to address inequalities

Areas of deprivation are not evenly spread across the UK. Some communities in the UK experience exceptionally high levels of disadvantage. Encouragingly, the Prime Minister has said that she is keen to use this parliament to tackle the “burning injustices” in society; building on existing EU arrangements for funding projects tackling disadvantage and regional inequalities, is a clear way in which her Government can achieve this.

Currently, disadvantaged communities will benefit from European Social Fund to the tune of €4.9 billion from 2014-2020 across the UK. Wales is a particularly strong

⁵ <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN07016>

beneficiary of ESF funding, and alone is set to receive €2 billion over the six years leading to 2020.⁶

Perhaps one of the most universal and visible ways in which European funding is being deployed in the UK is by supporting breakfast clubs across England. These clubs provide a vital, healthy meal for low income children ensuring that they can start the school day ready to learn, instead of being distracted by hunger.

Elsewhere across the UK, the ESF supports young people to gain the skills that they need to secure gainful employment. Considering that there are still quite stark inequalities in the proportions of NEET young people (16-24) across the UK (9% in London and 15.7% in South West Wales), it is vital that this continues.⁷ Recent analysis by the Social Mobility Commission has found that labour market outcomes for young people have remained poor over the past two decades and that the number of young people receiving work experience or careers advice has fallen. The report goes on to say that for too long, social mobility has not been given adequate attention in domestic policy.⁸ International NEET rates for 15-19 year olds in the UK are higher than the OECD average, therefore there is still a concerted effort needed to tackle entrenched regional inequalities.⁹

European Social Fund current objectives across the EU

- Employment: 75% of the population aged 20-64 should be in employment.
- Social inclusion: 20 million less people across the EU should be at risk of poverty.
- Education: The share of early leavers from education and training should be under 10%; and at least 40% of 30-34 year-olds should complete third level education.¹⁰

Spotlight on ESF project: Tackling poverty in the Greater Cambridge Greater Peterborough area¹¹

An ESF-funded programme provides a boost to people struggling with low skills, poverty and unemployment in Britain. The £5 million fund will be distributed in the Greater Cambridge Great Peterborough (GCGP) area and will support more than 1 500 people to find secure employment. Despite high employment figures, many GCGP areas have deprived communities facing inter-generational poverty and joblessness. Over 16 000 children grow up in poverty. The four community projects receiving funding are Community Connections North, Community Connections South, New Horizons and eMploY-ABILITY. The project, part of the Building Better Opportunities programme, is co-financed by the European Social Fund and the Big Lottery Fund.

⁶ <http://ec.europa.eu/esf/main.jsp?catId=381&langId=en>

⁷ <http://gov.wales/docs/statistics/2017/170726-young-people-not-education-employment-training-year-31-march-2017-en.pdf>

⁸ <https://www.gov.uk/government/news/an-analysis-of-2-decades-of-efforts-to-improve-social-mobility>

⁹ <https://www.oecd.org/unitedkingdom/45642018.pdf>

¹⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF>

¹¹ <http://cambridgeshireinsight.org.uk/housing/building-better-opportunities>

Committing to develop a new fund is a way in which the UK government can put social mobility at the heart of its agenda. The Government has already committed to create a 'Shared Prosperity Fund', which will guarantee the funding of all projects where ESF funding was secured before the Autumn statement 2016 where they demonstrate 'good value for money' and are 'in line with the UK's strategic priorities'. Clearly this is to be welcomed, but we are of the view that projects which support children and young people, youth employment, and seek to tackle child poverty and its effects head-on must be in scope of this new fund, as is currently the case with the ESF.

Child Poverty

4 million children live in poverty across the UK, and this is set to increase to 5 million by 2020 according to analysis by the Institute for Fiscal Studies.¹ Rising child poverty has been driven by cuts to benefits, which have been implemented over the course of the last decade. One of the principal examples is the imposition of the four year freeze on children's benefits and tax credits which will last until 2020. This freeze, which means that families will see no increase in key support irrespective of rises in the cost of living, will inevitably see more children end up in poverty, and more families struggling to afford the basics.

There are already indications that our decision to leave the European Union may result in a reduction in the predictability of economic indicators such as inflation. Between 2010-2020, prices as measured by Retail Prices Index are expected to rise by around 35%. Over the same period, child benefit, will have just risen by 2%.

The ESF plays a key role in 'combating poverty' and the provision of a new fund should continue to ensure that this role is fulfilled. The creation of a new fund would provide a timely opportunity for the government to look at policies that put family incomes at risk such as the four year freeze on benefits.

What would the suggested amendment achieve?

The purpose of this amendment would be to ensure that the UK government are under a duty to ensure that identical arrangements for engaging in cross-border agencies continues after exit day for the purposes of safeguarding children. Cooperation with cross-border agencies is vital in helping to tackle crimes such as child trafficking, child sexual abuse and child sexual exploitation.

The amendment will also place a duty on Ministers to develop a replica of the European Social Fund based on the principles set out in EU Treaties, on exit day, for the purposes of promoting the sustainable integration of young people and tackling poverty.

Insert new clause –

Duties to promote the safety and welfare of children and young people following withdrawal of the United Kingdom from the European Union

(1) The UK Government shall ensure that for the purposes of safeguarding children and promoting their welfare the following arrangements are put in place on exit day –

(a) The UK government cooperates with and participates in

- i. the European Union Agency for Law Enforcement Cooperation (Europol)*
- ii. Eurojust*
- iii. European Arrest Warrant*
- iv. European Criminal Records Information System*

(b) The UK government develops a fund for the purposes of

- i. Promoting sustainable and quality employment and supporting labour mobility;*
- ii. Promoting social inclusion, combating poverty and discrimination;*
- iii. Investing in education, training and vocational training or skills and lifelong learning.*

(c) The funding period will extend for six years from the day of exit and will replicate the total amount of funding from the European Social Fund agreed upon from 2014-2020, including an inflationary uplift.

(2) A Minister of the Crown may by regulations make such provision as is required to comply with subsection (1)

Questions to the Minister

- What assessment he has made of the need for the UK to remain a part of cross-border agencies for the purposes of safeguarding children?
- How the government plans to ensure that vital projects promoting social inclusion will be continued?
- What steps can be taken, as the UK leaves the EU, to help family incomes stretch further?