

The European Union (Withdrawal) Bill House of Lords, Committee Stage, 25th February

Charter of Fundamental Rights and Children's Rights

The UK Government's plan not to retain the EU Charter of Fundamental Rights (the Charter) through the EU (Withdrawal) Bill (the Bill) is a concern, particularly in relation to children.

The Charter enhances rights for children that already exist in the European Convention on Human Rights (ECHR) such as the right to education.¹ It also includes key rights enshrined in the UN Convention on the Rights of the Child (UNCRC)² such as the right to care and protection, to express views freely in accordance with their age and maturity, the principle of best interests being a primary consideration and the right to know both parents.³

The UK Government has stated that abandoning the Charter "*will not affect the substantive rights from which individuals already benefit in the UK*".⁴ This is not the case. A Legal Opinion sought by the Equalities and Human Rights Commission (EHRC), concludes that "*a failure to preserve relevant parts of the Charter in domestic law after Brexit will lead to a significant weakening of the current system of human rights protection in the UK*".⁵

Gaps in protection arising from loss of the Charter will include:

- The Charter has created new rights and extended existing rights: The UK Government's right-by-right analysis is superficial and merely identifies where aspects of a Charter right are protected domestically. This is not the same as these rights being protected in their entirety.
- The UK has not incorporated certain treaties into the domestic law, such as the UNCRC. It's misleading to imply that rights contained in unincorporated treaties would be adequately protected after Brexit as they would lack legal enforceability.

As such, we support the following amendments that make sure the Bill gives effect to the Government's commitment to protect these rights:

- **Amendments 34, 14, 20, 25 and 41 (ensure protections in the Charter are retained).**
- **Amendments 14, 20, 25 and 41 (relating to the interpretation and application of the Charter after exit day).**
- **Amendments 37 and 38 (which retain parts of the Charter necessary for specifically protecting children's rights).**

For more information, see our accompanying briefing:

[The European Union \(Withdrawal\) Bill, House of Lords, Second Reading, Tuesday 30th January 2018](#)

¹ CFR Article 14: Right to Education

² CFR Article 24: Rights of the Child.

³ These can be aligned with UNCRC Article 3 (best interests), Article 5 (the evolving capacities of the child), Article 6 (survival and development), Article 7 (to know and be cared for by both parents), Article 12 (to express views freely and have them taken into account).

⁴ UK Government, Department for Exiting the European Union, [Charter Factsheet](#)

⁵ Jason Coppel QC, [Opinion for Equality and Human Rights Commission](#) (5 January 2018), para 2; see also para 44.

Examples of the Charter promoting and protecting children's rights

Children's rights enshrined into the Charter have been translated into practice through EU legislation, policy and case law.⁶ This has included areas as diverse as legislation on child-friendly justice systems⁷ and ensuring the best interests of unaccompanied asylum seeking children⁸, through to policies designed to tackle high youth unemployment rates⁹ and child obesity.¹⁰

For example, the Charter has strongly influenced the development of EU regulations in relation to cross-border family law. In 2016, 1 in 10 children born in the UK were to families with one parent from the UK and another from an EU member state. EU cross-border family law regulations (covering issues such as child custody, contact, child abduction and child maintenance¹¹) provide these families with certainty about their legal rights in difficult situations. If a family breaks down and disputes arise between UK/EU parents, the EU framework ensures child rights-based court proceedings that make a difficult situation slightly easier for a child to cope with. For example, regulations ensure children have the opportunity to have their opinion heard during court proceedings that determine if they are to be returned to a parent in another country.¹² Further Charter-based proposals are being agreed that will strengthen children's rights further, ensuring that the best interests of the child is a mediating principle¹³ and including additional safeguards to speed up proceedings¹⁴ and fast-track the enforcement of access rights¹⁵ to save time and costs for families.

The impact of the Charter in informing the development of child-rights focussed cross-border family law regulations cannot be underestimated. This is one of many examples that show the value of the Charter. The Charter's strength goes beyond solely creating enforceable rights for children: it acts as a guiding light from which legislation and policy can be developed that protects, respects and fulfils children's human rights.

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⁶ Eurochild (2014) [Applying the EU Charter of Fundamental Rights to children's rights in the EU](#)

⁷ [Proposal for a Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings](#), 2013/0408 (COD). [Directive establishing minimum standards on the rights, support and protection of victims of crime, and on-going FRA research on forms of child participation in criminal and civil judicial proceedings](#), 2012/29/EU

⁸ COM (2014) 382 final

⁹ [EU Work Plan for Youth \(2014 –2015\)](#)

¹⁰ [EU Action Plan on Childhood Obesity 2014-2020](#), 24 February 2014.

¹¹ Procedural matters in relation to cross-border disputes across EU member states are dealt with under the Brussels II bis Regulation ("BIIR").

¹² BIIR Article 11(2). In abduction return proceedings, BIIR provides "it shall be ensured that the child is given an opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity".

¹³ The proposed Recast recognises a greater linkage between the best interests of the child and ensuring the child has an opportunity to be heard (Recital 13).

¹⁴ Recast BIIR Proposal art 25(4)

¹⁵ 3 BIIR Article 41 which by abolishes the requirement of *exequatur* so access orders are directly enforceable in another Member State provided they are accompanied by the appropriate certificate.