



## **European Union (Withdrawal) Bill**

### **Report 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 EU it is for Parliament to ensure that vital rights for children are protected and continue to be promoted – during and after UK withdrawal from the EU. 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 by ensuring that children's rights are not eroded by the UK's withdrawal from the EU.

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. In introducing NC7, and the associated schedule (amendments 26 and 111), the Government has made clear that the domestic priorities will be free from any restraint currently underpinning amendments to EU legislation. This will allow the Government to untether the interpretation of retained EU law from the current principles, including the commitment to the UN Convention on the Rights of the Child (UNCRC) that has been made at EU level.

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 amendment set out in this briefing, which would require the Minister to give due consideration to all parts of the UNCRC when carrying out duties and functions that were within EU competence before exit day. The amendment also seeks to ensure an audit takes place setting out how children's rights will continue to be protected across the UK following exit day. Precedence for such an audit to protect children's rights has already been set by the Scottish Government, which is currently undertaking a comprehensive audit on the most effective and practical way to further embed the principles of the UNCRC into policy and legislation, looking across the full range of legislative and delivery issues relevant to children's rights.<sup>1</sup>

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.'<sup>2</sup> The Minister has also stated that the Government has already given a commitment to Parliament to give due consideration to the UNCRC when making policy and legislation<sup>3</sup>. The unprecedented changes represented by UK Withdrawal from the EU requires Government to make clear this commitment, and to conduct a thorough audit of where children's rights are insufficiently protected in the UK.

## **Amendment**

The following amendment seeks to ensure that the due attention is given to preserving children's rights in the UK on our withdrawal from the EU.

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<sup>1</sup> Scottish Government (2017) A Nation With Ambition: The Government's Programme for Scotland 2017-18. <http://www.gov.scot/Publications/2017/09/8468>

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

<sup>3</sup> Committee Stage Debate, 5<sup>th</sup> March 2018, Ministerial response [https://hansard.parliament.uk/lords/2018-03-05/debates/AE7EB742-4BCD-4D00-B43D-AD7ED9A21911/EuropeanUnion\(Withdrawal\)Bill](https://hansard.parliament.uk/lords/2018-03-05/debates/AE7EB742-4BCD-4D00-B43D-AD7ED9A21911/EuropeanUnion(Withdrawal)Bill)

## **Amendment 55A**

Page 7, line 17, at end insert –

- (e) make any provisions without giving consideration to Part 1 of the United Nations Convention on the Rights of the Child ratified by the United Kingdom.

(3A) The condition in subsection 2(e) is fulfilled if, and only if, a Minister of the Crown lays before both Houses of Parliament-

- (a) a Ministerial Statement committing to give due consideration Part 1 of UNCRC ratified by the United Kingdom when carrying out duties and functions that were within the competence of the EU before exit day, or when exercising powers under this section or powers under section 7 to prevent, remedy or mitigate deficiencies; and
- (b) a comprehensive audit setting out how children’s rights will continue to be protected across the United Kingdom after exit day, particularly in areas where children’s rights are not currently protected under domestic law but were, before exit day, in EU law.’

*This amendment would ensure that UK withdrawal from the EU, and the subsequent powers to amend EU legislation in domestic law, would not undermine the protection of children’s rights in the UK and would not lead to regression in children’s rights protections after exit.*

It needs to be ensured that the UK maintain children’s rights safeguards that are already in place at an EU level, and that there is no erosion of existing rights protections after Brexit. A Ministerial Statement that commits to giving ‘due consideration’ to all parts of the UNCRC, in areas that were within the competence of the EU before exit day - when amending, implementing, introducing or repealing any laws necessitated by our withdrawal from the EU - would demonstrate a clear willingness to ensure that there will be no ‘going backwards’ in children’s rights protection after we leave the EU.

It would ensure that government action in this area is consistent with its duties under the UNCRC and that its commitment to children’s rights spans all areas of law and policy that will affect children post-Brexit.

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

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.

Domestically, no explicit constitutional commitment to children's rights exist at a central UK Government level, the level at which most EU legislation will be amended or repealed post-Brexit. As we leave the EU, we risk losing this additional layer of constitution protection for children's rights. The absence of these mechanisms means that decisions on key policy areas that have a profound effect on children's lives and well-being, such as welfare reform, immigration and cross-border criminal and civil cooperation for children's safeguarding, can be made without taking into account the possible impacts on children.

Indeed, we already know that many decisions taken at central government level – which have a significant impact on children's lives and wellbeing – are not taken with the principles and the provisions of the UNCRC in mind; there was for example no assessment of the impact on changes to legal aid on children's rights or access to justice. No statutory duty exists, as it does in Wales and Scotland, for Ministers to consider the UNCRC in the exercise of their functions.

Even where EU law is retained and brought into domestic legislation, it may be modified. Further, new or modified subordinate legislation will not need to be compatible with retained EU law, rendering much of the children's rights protection ineffective without a further ministerial commitment. The amendments proposed to protect equality and human rights – while important and to be welcomed – do not address child-specific issues, and the requirement not to modify equality legislation does not fully protect children. Children remain excluded from age discrimination under the Equality Act.

We welcome the recent progress made by the Department for Education (DfE) on developing training for officials on the UNCRC, as well as developing a Child Rights Impact Assessment template that can be used to aid policy development across Government departments. However, there has been no Ministerial Statement on the importance of children's rights since 2010, and across the devolved nations, development of the UNCRC in domestic legislation has been piecemeal.

At a devolved level there have 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 when exercising any of their functions.
- 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.
- 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

Existing domestic legislative mechanisms – such as the Children's Acts of 1989 and 2004 and the Human Rights Act – are insufficient to guarantee comprehensive rights protections for children. The Children and Families Act 2014 for example provides for a detailed offer for children with disabilities, for looked after children and for parents who need parental leave. However, it applies only in England, and does not provide positive, justiciable rights for children as individuals.

While 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. Existing domestic law protecting children does not reflect the full scope of rights covered by the UNCRC.

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

- Does the Minister accept that the Government must give due attention to the ways in which existing children's rights protections could be affected by UK withdrawal from the EU, and that further efforts are needed to ensure that there is no erosion of existing protections for the full range of issues affecting children which are currently governed by EU law?
- Will the Minister make a statement of commitment to give due consideration to the UNCRC in all areas where children's rights protections are affected by UK Withdrawal from the EU?

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