

# Making Brexit work for children

## The impact of Brexit on children and young people

November 2017



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# Introduction

There has been very little consideration to date of the specific impact of Brexit on children.<sup>1</sup> Nor has there been much effort to consider the very distinct implications of Brexit for children living in the devolved nations of the UK. This is in spite of the fact that children represent one fifth of the European Union (EU) population and one quarter of the UK population.

The EU has enacted over 80 legal instruments that confer direct entitlement for children covering issues such as migration, asylum, child protection, health and safety, paediatric medicine, access to social and economic rights and cross-border family breakdown.<sup>2</sup>

In more recent months, MPs and Peers have been engaging with experts from the children's sector, including practitioners, civil society organisations and academics, to better understand how children are affected by Brexit, and have called on the Government to ensure that the impact of Brexit on children is considered in a more meaningful way during the negotiations.<sup>3</sup>

To facilitate the transmission of informed and co-ordinated responses to those involved in the Brexit negotiations, children's experts from across the UK have come together to form the 'Brexit and Children' coalition looking at the impact of Brexit on children.

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<sup>1</sup> We use the general term 'children' in this paper to include all children under the age of 18. By 'young people' we mean those aged 18 -25.

<sup>2</sup> For full details of the legal and policy instruments enacted at EU level in relation to children, see [http://ec.europa.eu/justice/fundamental-rights/files/acquis\\_rights\\_of\\_child.pdf](http://ec.europa.eu/justice/fundamental-rights/files/acquis_rights_of_child.pdf)

<sup>3</sup> Based on these consultations, Baroness Massey has made speeches on children's rights issues in the House of Lords on two occasions, on the 28<sup>th</sup> June and the 17<sup>th</sup> July:

<https://hansard.parliament.uk/Lords/2017-06-28/debates/40B43E18-6186-4489-850A-95DCF873272E/Queen%E2%80%99Speech>; and [https://hansard.parliament.uk/lords/2017-07-17/debates/C046AC3A-0357-41FF-A40E-7210AD6BC5BD/BrexitUK-EUMovementOfPeople\(EUCReport\)](https://hansard.parliament.uk/lords/2017-07-17/debates/C046AC3A-0357-41FF-A40E-7210AD6BC5BD/BrexitUK-EUMovementOfPeople(EUCReport)).

Tim Loughton MP also submitted a written question to the Secretary of State for Exiting the European Union on 18<sup>th</sup> July 2017 inquiring as to which policy areas of relevance to children and young people will be considered within the Brexit negotiations.

Whilst EU law, policy and processes govern many areas of children's rights, the following summary highlights seven priority areas of concern, based on research, practice and initial consultation involving children and young people:

- The European Union (Withdrawal) Bill and the transposition of EU law and children's rights
- The settlement status of EU national children in the UK
- The potential implications of Brexit for child protection and safeguarding
- Children and young people living in poverty
- Children and cross-border family law
- Specific implications of Brexit for children and young people living in Ireland, North and South
- Ensuring that the views of all children and young people, including young children, Brexit are heard and taken seriously

This briefing paper is intended to help to ensure that the impact of Brexit on children is considered at all stages of the exiting process. It provides an overview of the most pressing issues that have so far been identified. Further work will take place to explore these issues in more depth, especially within the context of the devolved nations.

# Summary of recommendations

- The Government should ensure that all existing protections for children's rights in the EU legislative framework are protected and preserved in domestic law.
- The needs of children and young people should be considered in determining the settlement status of EU nationals, and for this group to be able to apply for settled status in their own right.
- The Government should put a strategy in place to continue membership of EU-level data, intelligence-sharing, training, research and security infrastructure with a view to protecting children
- In light of inflationary uncertainty caused by Brexit, the Government should end the current benefits freeze in place until 2020 to protect low-income families.
- The Government should guarantee that the proposed Shared Prosperity Fund will continue funding projects supporting children and young people post-Brexit.
- The UK should remain part of the EU family framework that regulates cross-border family law cases which offers the best protection for children's rights.
- The Government should ensure that children and young people across the UK are given the opportunity to express their views on all issues of relevance to them during the Withdrawal process.

# Section 1

## The European Union (Withdrawal) Bill and the transposition of EU law and children's rights

### Context

The European Union (Withdrawal) Bill (the Withdrawal Bill) will be a major new piece of constitutional legislation. In its current form it does three things:

- Repeals the European Communities Act 1972 (which provides legal authority for EU law to have effect as national law in the UK);
- Makes relevant EU law part of UK law, applicable across the nations. This means that laws and regulations made over the past 60 years by which the UK has been bound, will continue to apply after Brexit;
- Gives Ministers additional powers to amend EU derived law. A 'very significant proportion of EU-derived law' will require adjustment to ensure it works after Brexit day,<sup>4</sup> because, for example, it refers to an EU institution or reciprocity from EU Member States, or is now defunct. Many such changes would require new primary legislation. Given limited parliamentary time for this, however, the Withdrawal Bill will give Ministers powers to make these changes by secondary legislation, which does not require the same level of parliamentary scrutiny.
- Given the significant limitation these clauses impose on parliamentary scrutiny for the purpose of amending retained EU law, these measures are subject to 'sunset' clauses, which apply a time-limit to amending the law of either exit day, or where there is a 'deficiency' in the retained law, for a two year period post-withdrawal. However, the powers to amend legislation also potentially permit the amendment of primary legislation including the Withdrawal Bill itself, so could potentially allow for the extension of the Ministers' powers to make legislation that bypasses full parliamentary scrutiny.

Once the Withdrawal Bill is passed,<sup>5</sup> the Government will start to introduce the secondary legislation it needs. This secondary legislation can amend any aspect of primary legislation. Most will follow 'negative procedure', and may be annulled if either House of Parliament passes a motion to object. 'Affirmative procedure' – where consideration by a committee and a vote by both Houses in Parliament is

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<sup>4</sup> Department for Exiting the European Union, Legislating for the United Kingdom's withdrawal from the European Union (March 2017) Cm 9446 para 3.5

<sup>5</sup>The bill, as a constitutional measure, will be taken in the Committee of the Whole House. It will then need to go to the Lords. Both the Commons and the Lords will need to approve the bill, with any amendments, before it can be passed.

guaranteed – is required only in limited cases where Ministers create a new public authority, transfer powers to such an authority, create a new offence, charge a fee or ‘create or amend a power to legislate’. As previously noted, the powers are subject to a sunset clause<sup>6</sup> and expire after two years from ‘exit day’.

## Concerns

### Extended use of secondary legislation and lack of protection for children’s rights

Widespread concerns have been raised regarding the use of delegated powers and statutory instruments<sup>7</sup>. These allow the Government to amend laws without first facing detailed parliamentary scrutiny. These powers were intended to be used by the Government only for minor time-sensitive technical changes to laws but in the Withdrawal Bill can be used wherever the Minister believes it is ‘appropriate’. Importantly, although the bill contains some limited protections, it allows these powers to be exercised without any impact assessment, justification or ministerial statement. The time pressures caused by the Brexit timetable means that they will have to be used much more widely and liberally, risking the erosion of rights protections, including children’s rights, ‘by the backdoor’.

This is a particular concern given that Brexit will remove any children’s rights safeguards currently offered by the EU Charter of Fundamental Rights. The Charter imposes a constitutional obligation on Member States to adhere to children’s rights standards when implementing EU law and the EU’s Court of Justice now routinely refers to the Charter when adjudicating on cases involving children.<sup>8</sup> The Government has stated that the removal of the EU Charter of Fundamental Rights from UK law “will not affect the substantive rights from which individuals already benefit in the UK.”<sup>9</sup> The White Paper notes that many of the rights protected in the Charter are also found in UN and other international treaties which the UK has ratified – including the UN Convention on the Rights of the Child (UNCRC). However, in a centralised context, there is no specific statutory provision requiring respect for children’s rights in law-making, nor a general requirement to safeguard and promote the welfare of children in the UK.<sup>10</sup>

Stronger protection for children’s rights exists in the devolved nations. Specifically:

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<sup>6</sup> Clause 7(1)

<sup>7</sup> See House of Lords, Delegate Powers and Legislative Reform Committee, European Union (Withdrawal Bill) 28.9.2017

<sup>8</sup> Article 24. See further Stalford, H. Children and the European Union: Rights, Welfare and Accountability, 2012, Oxford Hart; and Stalford, H. (2014). ‘The CRC in litigation under EU law’. In T. Liefwaard, & J. Doek (Eds.), Litigating the Rights of the Child (pp. Chapter 12). London: Springer.

<sup>9</sup> Legislating for the United Kingdom’s withdrawal from the European Union, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/604516/Great\\_repeal\\_bill\\_white\\_paper\\_accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604516/Great_repeal_bill_white_paper_accessible.pdf)

<sup>10</sup> The current statutory provisions to safeguard and promote the welfare of children in England and Wales are found in the Children Act 1989 in relation to family proceedings and in the 2004 Children Act which places a duty on specific public authorities. The Borders Citizenship and Immigration Act 2009 places a similar duty on public authorities in respect of children subject to immigration control across the UK.

- In Wales, The Rights of Children and Young Persons (Wales) Measure 2011 imposes a duty on Ministers 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 Assessment on proposals for Welsh law or policy which will affect children directly or indirectly.<sup>11</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 Act also provides a duty on public authorities ‘..’ as soon as practicable after the end of each 3 year period...to publish (in such manner as the authority considers appropriate) a report of what steps it has taken in that period to secure better or further effect within its areas of responsibility of the UNCRC requirements’. What is more, in the Programme for Government 2017 the First Minister committed to look at ‘the most practical and effective way to further embed the principles of the UNCRC into policy and legislation, including the option of full incorporation into domestic law.’<sup>12</sup>
- In Northern Ireland, the Children’s Services Co-operation Act (Northern Ireland) 2015 requires co-operation among certain public authorities and other children’s service providers to improve the well-being of children and young persons. In determining the meaning of well-being for the purposes of the Act, regard is to be had to any relevant provision of the UNCRC.

However, the Withdrawal Bill will limit the scope of the devolved nations to alter law that is within the current devolution settlement and brings competence on matters that have been arranged under EU law back to Westminster. This would prevent devolved nations from exercising their powers to prevent, or amend legislation from Westminster, even where this contradicts their own commitments to children’s rights.

#### EU legislation that may be amended on transposition into UK law

The nature of the Withdrawal Bill is unclear as to the nature and scope of EU legislation which the Minister may deem appropriate to amend when it is transposed into UK law. The limited parliamentary oversight or assessment of the amendments will make scrutiny of these measures very difficult. Even where amended EU

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<sup>11</sup> See Simon Hoffman, 2015, Evaluation of the Welsh Government’s Children’s Rights Impact Assessment, Welsh Government

<sup>12</sup> <http://www.gov.scot/Resource/0052/00524214.pdf>



legislation may seem benign, the amendments may have significant consequences for children.

An example of amended EU legislation where children's rights could be eroded is the 2011 EU Anti Trafficking Directive, which has in part been transposed into domestic law through the Modern Slavery Act 2015, the 2015 Human Trafficking and Exploitation (Scotland) Act), and the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

However, not all nations have transposed the full scope of provisions in the directive which includes important safeguards for victims of trafficking, including explicit reference to unaccompanied minors in preamble 23 (particular assistance, support, guardianship, durable solutions) and Article 16 (member states should take necessary measures to ensure specific, durable, actions to assist and support child victims of trafficking taking into account special circumstances of the child victim). Currently where national law is silent on the implementation of specific, positive obligations, then the provisions of the directive may become directly applicable.

The absence of comprehensive protection provisions across domestic legislation and the failure to implement guardians for trafficked children highlights the half-hearted nature of children's rights protections to date. Without the full transposition and protection of the rights contained in the EU Trafficking Directive, child victims of modern slavery in the United Kingdom will be unable to rely on domestic legislation for full protection post Brexit. Even if the transposition is complete, the terms of the Withdrawal Bill allow the Government to modify parts of the directive which do not conform with domestic legislation without further scrutiny.

Section 2 of this discussion paper highlights the concerns around migrant children in the UK. The right to remain in the UK for non-European, non-British national parents of UK children is found in the EU free movement of persons provisions, and the Treaty on the Functioning of the European Union.<sup>13</sup> Even if this were to be brought into UK law under the terms of the Withdrawal Bill, the ability to amend this via secondary legislation could see the rights removed more easily after exit with limited scrutiny. Even after the expiry of the sunset clause, the absence of an overarching rights framework would leave legislation vulnerable to further amendment if Parliament agreed. If this happened, parents would be left without status in the UK, and UK children would be forced to leave the country. There is currently no obligation to assess the impact of this repeal on children.

### Maintaining children's rights protection following Brexit

What happens with regards to other areas of EU law will also require close consideration. Even once the sunset clause expires, arms-length bodies may be able to make tertiary legislation without further scrutiny. Even without this, the protections

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<sup>13</sup> TFEU, Articles 20-21; Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ L158/77, Articles 2, 3, 7, 12, 13.

contained in EU law, and the co-ordinated approach towards greater accountability for children's rights, safeguarding and well-being will be lost. Without further measures of accountability, a children's rights perspective or even an assessment of the impact of any new legislation is not required. This will include the legislation required to complete the UK's exit, such as the proposed Immigration Bill, and any further domestic primary and secondary legislation, whether or not related to Brexit.

### **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 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 UNCRC (*Dynamic Median Vertriebs GmbH v Avides Media AG* (Case C-244/06) [2008] ECR 1-505). 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.

### **Recommendations**

- The Government should ensure that all existing EU law protections for children's rights are incorporated into UK law following Brexit. These include:
  - Rights in EU Directives which the Government have not fully incorporated in UK law, such as the Qualification Directive providing for humanitarian protection where someone is at risk of death, inhuman or degrading treatment or threats as a result of violence in conflict;
  - Rights in CJEU case law, for example governing the rights of British children to remain in the UK with their families to access healthcare, education and the rights and entitlements bestowed on them through citizenship, even where their parents do not have immigration status;
  - Directly applicable EU regulations, for example the Data Protection regulations which allow for the right to be forgotten online as children grow up.
- The EU Charter of Fundamental Rights (the Charter) should be brought fully into the domestic law of all UK nations, to ensure adequate protection for issues of centralised and devolved concern.

- The Government must expressly in primary legislation protect children’s rights in the context of Brexit. This could be achieved through requiring all regulations that are introduced as a result of Brexit to give due regard to the UNCRC, or by the full incorporation of the UNCRC into UK law. To allow for adequate transparency and accountability, the Government should introduce a requirement to carry out a child rights impact assessment (CRIA) prior to the decision to introduce a statutory instrument.
- Where it is not possible to directly incorporate existing EU regulations that rely on multi-lateral agreements, such as the Dublin III Regulation<sup>14</sup> and EU family justice measures,<sup>15</sup> the Government must endeavour to replicate the agreements and guarantee that negotiations to do so will protect existing children’s rights.

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<sup>14</sup> Regulation No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180/31

<sup>15</sup> See further Section 5 of this discussion paper.

## Section 2

### The settlement status of EU national children in the UK

*Please note: As immigration is a 'reserved power', the concerns and recommendations in this section also apply to the devolved nations. However, this paper does not address specific issues affecting children in Northern Ireland, including those who claim or have the right to claim Irish citizenship under the Good Friday Agreement, and the cross-border mobility of children between Northern Ireland and the Republic of Ireland including under the Common Travel Area provisions. See section 6 for further discussion of these issues.*

#### Context

In 2016, 679,000 European national children under the age of 18 resided in the UK.<sup>16</sup> A small additional number of non-European children also live in the UK under rights provided for by EU law. A significant proportion of these children live here long-term: around 258,000 (38%) were born in the UK.<sup>17</sup> Children living in the UK under EU law are often well-integrated, attending school, making British friends and speaking English. Some children have no memories of life in another country, lack relationships with family or friends abroad, and/or have no meaningful connection with their 'home country'.

The Government has published its plans for 'Safeguarding the Position of EU Citizens Living in the UK and UK Nationals Living in the EU'.<sup>18</sup> Under the current UK proposals, 'qualifying' EU nationals (and their family members) will get settled status (indefinite leave to remain under the Immigration Act 1971), once they have been in the UK for five years (those with less than five years' residence will get temporary residence status until they qualify for settled status). This 'settled status' will not be automatically conferred – all EU nationals, including those with permanent residence documents, will have to make an application. The European Commission have also released their views on the future position of citizens' rights. These principles are brief, and require equal treatment of EU nationals with UK nationals.

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<sup>16</sup>Migration Observatory analysis of *Labour Force Survey 2016, Quarter 1 (Jan-Mar), conducted May 2017*, Numbers are rounded to nearest 1,000 prior to calculating percentage

<sup>17</sup>Ibid and Migration Observatory, *Young People and migration in the UK: an overview*, December 2016 <http://www.migrationobservatory.ox.ac.uk/resources/reports/young-people-migration-uk-overview/>

<sup>18</sup> Home Office, Prime Minister's Office, 10 Downing Street, UK Visas and Immigration, Department for Exiting the European Union, and Foreign & Commonwealth Office, "Safeguarding the Position of EU Citizens Living in the UK and UK Nationals Living in the EU", at <https://www.gov.uk/government/publications/safeguarding-the-position-of-eu-citizens-in-the-uk-and-uk-nationals-in-the-eu>

## Concerns

There is very limited consideration of the specific status and needs of EU migrant children in the Government proposals. EU national children and young people should not be seen merely through the free movement prism as ‘family members’: appendages of their parents/relatives with status in the UK dependant on their parents’ status and residence. Children may have a right of residence that their family members do not have, or they may not be in contact with EU family members in the UK. Given that children can be exercising their treaty rights while being in education, for example, they must have an independent right to the new ‘settled’ status where appropriate. Any decisions on residence and status must also take into account the best interests of the child,<sup>19</sup> and children’s rights should not be made dependent on the rights of their parents.

It is critical that children in care are not left out of a settlement also. There are currently 70,440 looked after children in England, 5,662 in Wales, 15,317 in Scotland and 2,983 in Northern Ireland. Whilst we have no clear data on the nationalities of children in care, there may be many thousands who are nationals of other EU countries. These children currently face insecurity when they become adults so it is critical that they are given clear information and legal assistance to secure long-term residence and associated entitlement. Similarly, Brexit will affect British children who are currently being looked after by relatives in another EU Member state. This option may no longer be viable if there is uncertainty that children or the families cannot remain in that EU state following Brexit.

### Case Study

Coram Children’s Legal Centre received a call from the hospital assisting a 19-year-old pregnant Polish care-leaver. She had come to the UK in 2008 and her parents had been working. It is not clear whether they were registered under the Workers Registration Scheme, and she no longer had any contact with them. Establishing her right to be here for the new settlement route may be difficult, as she has lived in a variety of different placements and did not have much evidence of the length of her stay. She will need to gather information from the different foster places and independent accommodation where she has lived, as well as school records. Depending on the cut-off date, her child may be born after the date (which can be any time from 29 March 2017) and therefore will be unable to accrue the five years required for settlement from that point.

Non-EU children currently struggle to regularise their immigration status in a system which is complex, expensive and for which there is limited access to free legal advice.<sup>20</sup> Though not stated, failure to make this application successfully could see

<sup>19</sup> Under Article 3 of the UN Convention on the Rights of the Child

<sup>20</sup> Coram Children’s Legal Centre, ‘This is my home’, 2017 <http://www.childrenslegalcentre.com/this-is-my-home/>

an individual's right to be in the UK lapse, which would result in losing their right to work in the UK, rent private accommodation, or have a bank account or a driving licence.

Any new system for EU nationals must avoid an increase in children finding themselves undocumented because of practical barriers or policy decisions. The application system must be as simple as possible and the evidential threshold must be one that *all* children can meet. The costs of applying for settled status must be no higher than the current cost for permanent residence and there should be a right of appeal for all applications under this new scheme. The barriers to children registering as British citizens, including prohibitively high fees, should also be considered against the benefits to the individual and to the UK as a whole.

Neither the Commission, nor the Government has addressed the specific needs and rights of children in its plans, and more detail is required on the process and evidential requirements if we are to be reassured that EU national children will not fall through the gaps, as non-EU children do in our current immigration system.

The uncertainty of EU nationals' futures affects not just children and biological families, but adopters and foster carers also. In the case of foster carers, for example, while it is not necessary to hold a particular type of immigration status in order to be approved as a foster carer, agencies may not want to approve a carer for whom there is uncertainty over their future in the UK. Furthermore, if a connected persons foster carer loses their right to remain in the UK they may have to take the child with them, which might not be possible if the child has a different nationality. Brexit is creating uncertainty and confusion and its direct impact will be on vulnerable children.

## **Recommendations**

It is critical that any new rules governing the rights of European nationals in the UK after Brexit must be workable, fair and take into account the rights of children and young people who have grown up in this country. A child-friendly settlement for European nationals currently residing in the UK should:

- Allow European nationals in the UK with permanent residence or who are able to show five years' residence, including all EEA family members and those with derivative rights, indefinite leave to remain through a simple process that is easy to administer with no application fee;
- Ensure that all children and young people who have been in the UK are able to apply for settled status in their own right;
- Ensure that children and families are able to protect their rights through a right of appeal in domestic courts and access to an independent adjudication mechanism;

- Provide and promote clearer guidance on European national children whose future is in the UK who may be registered as British citizens through the Secretary of State's discretion.
- The Government should also, as a matter of urgency, start gathering data on the numbers of EU national children supported by local authorities and the numbers of EU national foster carers and adopters, in order to truly assess the potential impact of Brexit on children.
- Ensure that all EU national foster parents receive indefinite leave to remain so that the home lives of UK national children placed with them are not unnecessarily disrupted, and that the necessary administrative processes are completed by the local authorities on whose behalf these foster parents provide care.

For more information on the English context, see Coram Children's Legal Centre's briefing, ['A settlement for European children in the UK.'](#)

# Section 3

## The potential implications of Brexit for child protection and safeguarding

### Context

EU law provides a range of legislation which protects children from abuse and neglect and helps to ensure their safety in a range of different contexts, including consumer safety,<sup>21</sup> child trafficking,<sup>22</sup> parental child abduction,<sup>23</sup> immigration and asylum,<sup>24</sup> and labour and sexual exploitation.<sup>25</sup> Insofar as some of this law is firmly embedded within the domestic regulatory framework in the form of primary and secondary legislation, it is hoped that the protection it provides will continue beyond Brexit. The UK has made clear that it will seek an agreement with the EU that allows for close and comprehensive cross-border civil and criminal cooperation on a reciprocal basis, which reflects closely the substantive principles of cooperation under the current EU framework.<sup>26</sup>

The value of EU support in the field of child protection extends far beyond binding laws though; equally important is the EU child protection infrastructure to facilitate cross-national gathering and exchange of information relating to both victims and perpetrators and to fund crucial educational and support measures. This is particularly important for adoption and fostering purposes in the UK as potential carers (many of whom are non-UK nationals) have to undergo a thorough assessment. The assessment includes obtaining background checks (criminal record, medical and social services checks) within the UK and from another country, if the applicant has lived abroad. Records checks are also required as part of care proceedings where it may be possible to place a child in care permanently with a family member outside the UK. These checks ensure that there are no known

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<sup>21</sup> For example in the field of [media content](#) and [toy safety](#).

<sup>22</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101/1

<sup>23</sup> Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, OJ L 338,

<sup>24</sup> See for instance Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), OJ L 180/31. For more detail on the Common European Asylum System and how it affects children, see [ILPA Brexit Briefings](#)

<sup>25</sup> Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ L 335/1

<sup>26</sup> See for instance Brexit: Dawson, J. '[Implications for Policing and Criminal Justice Co-Operation](#)', [House of Commons Briefing Paper No.7650, 24 February 2017](#)



concerns preventing applicants from looking after a child, whether they are British or nationals of other Member States.<sup>27</sup>

Take, for example, a person living in the UK who would like to become a foster carer and look after a child currently in care. The person is British, but used to live in Spain and Portugal. As part of the fostering assessment background checks in all countries the applicant previously resided in need to be completed to ensure that there have been no concerns that would prevent the person becoming a carer. Such information may not be readily available post-Brexit, meaning that either the foster carer will be turned down or the local authority will need to make a decision on whether to allow someone to care for a child. If the information takes considerably longer, this will cause delays in recruiting foster carers who are already in short supply.

Specific examples of some of the mechanisms that have been set up by the EU to support cross-national co-ordination and collaboration on child protection issues include:

- **EUROJUST** is a judicial co-operation body responsible for co-ordinating investigations and prosecutions across the Member States (the UK is a member of this body). Its activities primarily focus on organised criminal activity that crosses borders, particularly human trafficking.
- **EUROPOL**, the European Law Enforcement Agency, 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.
- The **European Arrest Warrant (EAW)** provides 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. While the EAW was initially driven largely by a desire to track down suspected terrorists, it is increasingly used to bring to justice perpetrators of crimes against children following their move to another Member State.
- The second generation **Schengen Information System (SIS II)** is an extensive database of (approximately 70 million) real time alerts about individuals and objects (such as vehicles) of interest to EU law enforcement agencies. It includes information on people wanted under a European Arrest Warrant for alleged crimes against children and on missing children.

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<sup>27</sup> For further discussion of the EU legal framework governing cross-national care arrangements see Section 5 on EU Family law

- **The European Criminal Records Information System**, ECRIS, provides an efficient system by which authorities in different Member States can exchange information on individuals with criminal convictions. It establishes an electronic interconnection of criminal records databases to ensure that information on convictions is exchanged between Member States in a uniform, speedy and easily computer-transferable 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.
- **The European Protection Order** enables a judge to issue protection measures in order to protect a person against a criminal act which may endanger his or her life, physical or psychological integrity, dignity, personal liberty or sexual integrity. It is used, for example, to ensure that protective orders put in place in one Member State for children (eg against a violent parent) remain in force should the child or the aggressor move to any other Member State.<sup>28</sup>

The EU has also developed policies and supported research, data gathering, information exchange and training across a range of child protection areas, including: Online child abuse,<sup>29</sup> Missing Children,<sup>30</sup> and violence against women and children.<sup>31</sup> For example, the European Commission is working towards an early warning system for missing children that is operational across the EU; it has proposed children specific provisions for the Common European Asylum System; and it has proposed principles for an integrated child protection system. Europol's European Cybercrime Centre also supports Member States in tackling cross-border use of new technologies in child sexual exploitation.

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<sup>28</sup> See further Regulation on protection measures in civil matters (606/2013) which covers recognition and enforcement of protection measures, including for victims of domestic violence

<sup>29</sup> The European Commission's 2012 "[Strategy for a Better Internet for Children](#)" supports a series of actions to be undertaken by the Commission, Member States and by the [whole industry value chain](#).

<sup>30</sup> Including the establishment of a [116 000 Hotline](#), reserved in all EU countries to facilitate rapid reporting and cross-border, co-ordinated efforts to locate missing children. In the UK, this is currently managed by the charity, [Missing People](#)

<sup>31</sup> Funded under the European Commission's Daphne Programme since 1997 with an annual budget of up to €16.7m. The Daphne programme continues in the period 2014-2020, as part of the Commission's [Rights, Equality and Citizenship Programme](#).

**Example: Investigation into the suicide of Northern Irish teenager, Ronan Hughes.**

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 the police service in Northern Ireland (PSNI), the National Crime Agency, Romanian law enforcement officers and Europol collaborated in the investigation, which led to the perpetrator being prosecuted and jailed for four years. Post Brexit, in the absence of the same level of co-operation, such cases will prove much more difficult to solve, resulting in protracted investigations and further, unnecessary trauma for any children involved.

**Concerns**

It is unclear whether, post-Brexit, the UK will continue to have access to important cross-national intelligence-sharing and capacity-building programmes to support child protection. This is particularly concerning given the high proportion of nationals from other EU Member States who are recruited to work in children's services such as schools, child care, paediatric health care, social services and charitable organisations. The land border between Northern Ireland (NI) and the Republic of Ireland also raises particular safeguarding concerns if the cross-border mechanisms to monitor and identify those who present a risk to children are withdrawn.

In addition, there are concerns that EU funding currently available for frontline staff in child protection organisations will not be replaced; that educational programmes aimed at promoting children and adults' awareness of online risks will no longer be adequately funded; and that mechanisms to report and co-ordinate cross-national responses to missing children and child abuse will be withdrawn.

**Recommendations**

- A strategy should be put in place to negotiate on-going membership of the EU-level data, intelligence-sharing, training, research and security infrastructure with a view to protecting children.
- That a comprehensive audit of EU funding for child protection is undertaken so that funding gaps left by Brexit are identified and filled.
- That negotiations relating to the border between NI and the Republic of Ireland take specific account of the implications of cross-border mobility for child protection and safeguarding.

# Section 4

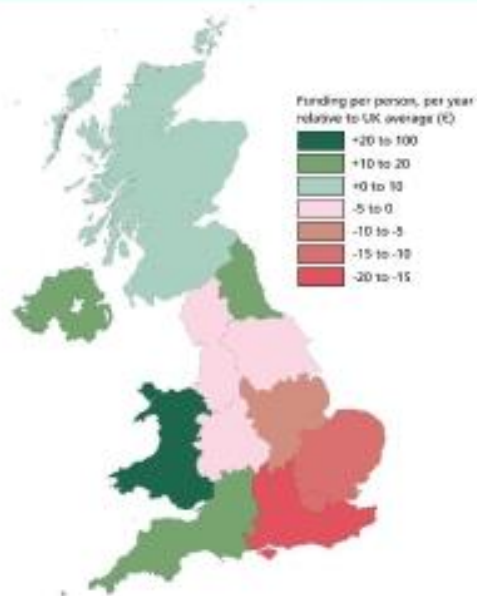
## Children and young people living in poverty

### Context

Four million children across the UK live in poverty and child poverty rates are rising – forecasts indicate that by 2020, as many as five million children could face poverty.

Rising child poverty is driven by cuts to benefits and Tax Credits which have been implemented over the course of the decade. One of the principal examples of this is the imposition of a four-year freeze on children’s benefits and Tax Credits which will last until the end of the decade. This freeze, which means that key support sees no

ESF/ERDF funding per person, per year by region relative to the UK average (€)



increases regardless of rises in costs of living, will inevitably push more children into poverty.

Poverty is not evenly spread across the UK. Some communities face exceptionally high levels of poverty and disadvantage. For example, the nature of Northern Ireland’s economy makes it particularly vulnerable to the potential negative effects of Brexit. The EU does much to support the UK in tackling child poverty. Most directly, the European Social Fund (ESF) provides support for these communities – helping people find jobs, improving education and addressing social exclusion of the most disadvantaged. Support for young people has been a particular focus of ESF investment -

both to help this group move into work, and to provide the upskilling, training and career advice they need to progress in the workplace.

Between 2014 and 2020, the ESF is expected to invest around €4.9 billion in disadvantaged communities. Further support is also provided through the European Regional Development Fund (ERDF) – intended to offset imbalances in economic development between different parts of the EU.

As can be seen in the diagram above, relative to the rest of the UK, Wales receives the highest level of financial support per person. Wales has received £4bn of EU Structural Funds since 2000, and between 2014–2020 is set to benefit from over

£2bn in further EU investment.<sup>32</sup> Northern Ireland, the South West of England, the North East of England and Scotland, also benefit from the ESF and ERDF more than average for the UK. As discussed below, although the Government has agreed that some level of financial support will be provided after Brexit, the exact nature of this and the arrangements with the devolved governments has not yet been agreed.

## Concerns

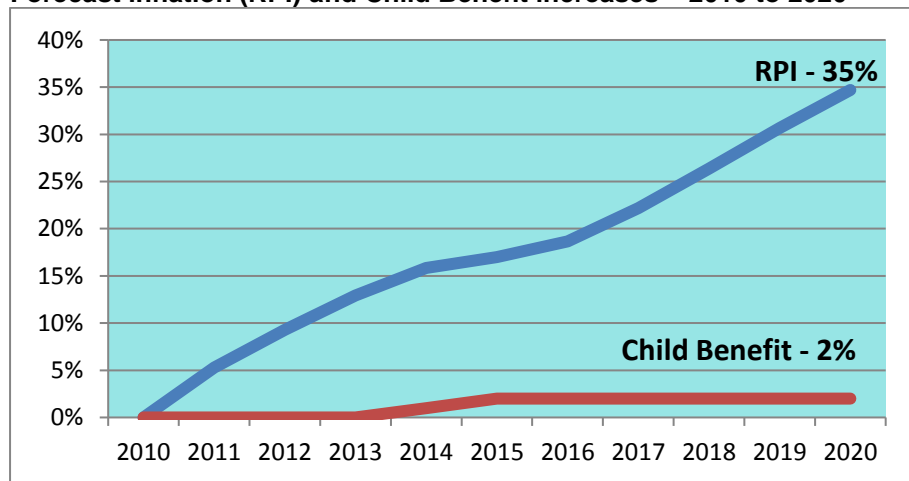
### Inflation and Child Poverty

Before the decision to leave the EU there were already major risks to child poverty caused by the four year freeze on children's benefits and tax credits – Brexit presents additional risks. There are already indications of Brexit being associated with rising inflation rates which significantly increase the impact of the freeze - driven in particular by the falling value of the pound.

In March 2016, the Office for Budget Responsibility forecast that prices (as measured by the Retail Prices Index) would rise by 2.8% in the year to the first quarter of 2018; by March 2017, this projection had risen to 4%.

Overall, between 2010 and 2020, prices (as measured by the Retail Prices Index) are expected to rise by around 35%. Over the same period, Child Benefit – one of the key benefits for children – is expected to increase by just 2%.

**Forecast inflation (RPI) and Child Benefit increases – 2010 to 2020**



### The future of funding for disadvantaged communities

The Government has committed that all structural and investment fund projects signed before Autumn Statement 2016 will be fully funded even when these projects continue beyond the UK's departure from the EU. Funding for projects agreed post

<sup>32</sup> See <http://www.childreninwales.org.uk/news/news-archive/brexit-childrens-rights-wales-briefing-paper-311017-w/>, and Information about EU structural funds in Wales is available here: <http://gov.wales/funding/eu-funds/2014-2020/?lang=en>

Autumn Statement 2016 will be honoured by the Government, if they are “good value for money” and “in line with domestic strategic priorities”.

The Conservative manifesto promised a “Shared Prosperity Fund” to replace EU funding post Brexit that will be “designed to reduce inequalities between communities across our four nations. The money that is spent will help deliver sustainable, inclusive growth based on our modern industrial strategy.”<sup>33</sup>

However, whilst the Conservative manifesto makes a commitment to the introduction of this new fund, the Government has not yet given guarantees regarding the level or targeting of funding to be provided for projects supporting children and young people in poverty post Brexit.

### **Recommendations**

The decision to leave the EU could have a profound impact on children and young people facing poverty. This is a result of both the direct impact of leaving the EU on funding for disadvantaged communities, and because of the potential economic impacts of Brexit on the finances of low-income families. The following recommendations would help to ensure that Brexit does not result in significantly more children falling into poverty in the coming years:

- In light of inflationary uncertainty caused by Brexit, the Government should end the current benefits freeze in place until 2020.
- The Government should guarantee there will be no reduction in funding for projects supporting children and young people in poverty post Brexit. The development of the Shared Prosperity Fund should be used as an opportunity to focus funding on evidence based projects which address child poverty.
- The Government should commit to an initial 6-year funding period for the Shared Prosperity Fund, and that support provided for disadvantaged communities through the fund is maintained in real terms compared to equivalent provision through the ESF.

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<sup>33</sup> The Conservative Manifesto 2017, <https://s3.eu-west-2.amazonaws.com/manifesto2017/Manifesto2017.pdf>, p.35

# Section 5

## Children and cross-border family law

### Context

A significant proportion of the estimated 3.2 million EU citizens currently residing in the UK have formed ‘international’ families. In 2016 alone, 15,878 births (2.3% of total births in England and Wales) were to mothers born in another EU state and a UK-born father. A further 9,150 births (1.3%) were to a UK-born mother and an EU-born father, and 44,449 births (6.4%) were to parents both born elsewhere in the EU.<sup>34</sup> Scottish and Northern Irish figures display a similar distribution.<sup>35</sup>

Approximately 13% of these international families will face contentious breakdowns and disputes over child maintenance, residence and care. In such cases, it is vital that citizens have access to clear rules determining which country’s courts shall have jurisdiction and under what conditions decisions from one state may be recognised and enforced in another.

For intra-EU disputes, these procedural matters are dealt with under the [EU Brussels IIbis Regulation](#) (IIbis) (which regulates child custody, contact and parental child abduction) and the [Maintenance Regulation](#). These EU Regulations are based upon and supplement existing international law, including conventions of the Hague Conference on Private International Law.<sup>36</sup>

The current EU framework offers procedural protection for children’s rights in several ways<sup>37</sup>:

1. **Automatic recognition and enforcement of decisions:** EU law ensures that decisions around child custody, access and maintenance reached in one

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<sup>34</sup> Office for National Statistics, ‘Dataset: Parents’ Country of Birth: 2016” (ONS, 24 August 2017) <<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/livebirths/dataset/s/parentscountryofbirth>> accessed 1 October 2017 (see in particular Table 3, additionally also of interest are Tables 1 and 2)

<sup>35</sup> For Scottish figures see: National Records of Scotland, ‘Table 3.10: Live births, country of birth of mother by country of birth of father, Scotland, 2016’ (*National Records of Scotland*, 2016) <<https://www.nrscotland.gov.uk/files//statistics/vital-events-ref-tables/16/3-birth/ve-ref-tabs-16-tab3.10.pdf>> accessed 1 August 2017; for Northern Irish figures see: NISRA, ‘Registrar General Annual Report 2015: Tables and full report’ (*NISRA*, 31 August 2016) <<https://www.nisra.gov.uk/publications/registrar-general-annual-report-2015-tables-and-full-report>> accessed 1 October 2017 (see “Births” section, most relevant tables being 3.15, 3.16 and 3.22)

<sup>36</sup> Namely The Hague Convention on the Civil Aspects of International Child Abduction, 25 October 1980; The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, 19 October 1996; The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, 23 November 2007

<sup>37</sup> The EU has no competence to determine the *substantive* family law of its Member States. It may only lay down common rules of procedure such as which Member State’s courts shall have jurisdiction, and under which conditions orders from one country may be recognised and enforced in another.

Member State can be automatically recognised and enforced in any other Member State to which any of the parties move. This provides children with certainty and security around contact, care and financial support and avoids the delays and costs associated with securing new orders in other countries. It also prevents parents from evading their obligations by moving to another country.

2. **Best interests of the child as an underpinning principle:** According to Recital 33, the *BIIbis* Regulation seeks to secure the best interests of the child, in accordance with Article 24 of the EU Charter of Fundamental Rights, and Article 3 of the UNCRC.
3. ***BIIbis* reinforces children’s right to participate in cross-border family proceedings;** a decision around custody, access and return following child abduction may not be enforced if there is evidence that the child has not been given the opportunity to be heard.
4. **Fast-track decisions:** in abduction return proceedings, *BIIbis* provides that a decision must be reached within six weeks “except where exceptional circumstances make this impossible.”<sup>38</sup> [Proposals to amend \*BIIbis\*](#), which the UK has expressed a desire to opt into, clarifies that this limit pertains to each stage of proceedings (first instance, appeal, enforcement - 6+6+6 weeks). However, it also includes additional safeguards aimed at expediting proceedings such as limiting the number of appeals<sup>39</sup> and concentrating such cases within the judicial systems of Member States.<sup>40</sup>

The *BIIbis* Regulation also regulates cross-national child protection proceedings. It allows jurisdiction to be transferred from the courts of one Member State to another when this is in the best interests of the child.<sup>41</sup> Transfer under Article 15, coupled with close judicial cooperation, have been instrumental in protecting children subject to care proceedings by ensuring that the courts best placed to deal with a care application have the authority to do so.<sup>42</sup>

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<sup>38</sup> Article 11(3)

<sup>39</sup> Recast BIIIR Proposal art 25(4)

<sup>40</sup> Recast BIIIR Proposal art 22, see also preamble para. 26

<sup>41</sup> Article 15

<sup>42</sup> Lamont, R. and McGlynn, C. 'Cross-border public care and adoption proceedings in the European Union' (2016) 38 *Journal of Social Welfare and Family Law* 94. Case C-428/15 *Child and Family Agency v JD* EU:C:2016:548.



Take the example of two British children are taken into care by a local authority in Germany due to suffering significant harm. There are no family members in Germany who are able to look after the children. Therefore the German authority would like to explore the option of relatives in the UK caring for the children and require an assessment to be completed. Using Brussels IIR the German authorities can request an assessment from the UK authority on the parental grandparents. Following a positive assessment the German authorities are now in the process of placing the children in their grandparents care in the UK. Authority to deal with further proceedings relating to the child can also be transferred to the UK courts.

## Concerns

EU Family law, and particularly the proposed revised *BIIbis* Regulation makes more explicit provision for children's rights than alternative cross-border family law instruments, but there is, as yet, no clear vision of how to protect these rights following Brexit. Three possible options for regulating cross-border family law are currently being considered:

1. **Negotiating with the EU to remain party to EU family law with full reciprocity.**<sup>43</sup> This will require some role for the Court of Justice of the European Union (CJEU). Leaving the jurisdiction of the CJEU is a red-line issue of the Withdrawal Bill<sup>44</sup> yet some commentators have suggested that an alternative arrangement may be possible whereby the CJEU would have an *advisory* role but not a binding one.<sup>45</sup> Moreover, it is not yet clear when the proposed recast Regulation, with its enhanced protection for children's rights, shall enter into force before Brexit and therefore be transposed into domestic law under the terms of the Withdrawal Bill.
2. **Remaining party to EU family law *unilaterally*, without reciprocity.** This is the approach taken by the Withdrawal Bill. However, without reciprocity the above EU instruments lose much of their effectiveness: UK courts would be under a unilateral obligation to respect and enforce incoming judgements from remaining Member States but these states would no longer be bound to treat UK orders in

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<sup>43</sup> See the recommendations set out in '[Providing a Cross-Border Civil Judicial Co-operation Framework: A Future Partnership Paper](#)', Department for Exiting the European Union, August 2017; and '[Essential Principles on Ongoing Judicial Cooperation in Civil and Commercial matters](#)', European Commission, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU, 13 July 2017

<sup>44</sup> European Union (Withdrawal) Bill, s.1

<sup>45</sup> see comments of Rebecca Bailey-Harris, House of Lords Select Committee on the European Union, Justice Sub-Committee, 'Corrected oral evidence: Brexit: civil justice cooperation and the CJEU' (Evidence Session No. 2, 6 December 2016) <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-justice-subcommittee/brexit-civil-justice-cooperation/oral/44261.pdf> accessed 20 June 2017, 8

the same way.<sup>46</sup> Those states with less robust provision for children than the UK may not enforce the decisions of the UK courts.

3. The Withdrawal Bill makes provision for the repeal of EU-derived law which is based on reciprocal arrangements<sup>47</sup> and so **the UK may seek to fall back on existing international agreements** (most likely the Hague Conventions supplemented by bilateral agreements with individual states) to regulate cross-border family cases between the UK and remaining EU Member States post-Brexit. Reliance on the Hague Conventions alone may result in a watering down of protection for children.

A further concern relates to the application of the Hague Conventions between the UK and remaining EU Member States after Brexit. In relation to maintenance disputes, the EU acceded to the 2007 Hague Maintenance Convention on behalf of its Member States. The UK shall accordingly cease to be bound by this Convention once it leaves the EU unless prior action is taken by the UK Government to accede in its own right. The Withdrawal Bill will also affect the internal legal status of the 1996 Hague Convention on parental responsibility which and may require further primary legislation.<sup>48</sup> Further concerns have been raised by the AIRE Centre regarding the application of the 1980 Hague Abduction Convention between the UK and remaining EU Member States after Brexit.<sup>49</sup> These technical issues all require clarification by the UK Government so that there is no “gap” in the application of these Conventions following Brexit.

A final concern relates to the UK Government’s post-Brexit immigration strategy. EU family law is a corollary to EU free movement law. The free movement of citizens is facilitated by the fact that family disputes can be dealt with easily across EU borders. Brexit has the potential to result in more hostile immigration measures which could make it more difficult to enter and reside in the UK for the sake of family contact or reunification. Individuals would have to rely more on Article 8 European Convention on Human Rights (right to family life). The problem, however, is that judges have not always been consistent in interpreting this right in favour of children, which has led to many children having to relocate or settle for “skype” relationships with their families abroad.<sup>50</sup>

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<sup>46</sup> see comments of Professor Lowe, noting that the Bill*is* and Maintenance Regulation would lose their effectiveness due to this loss of reciprocity – Nigel Lowe, ‘Some reflections on the options for dealing with international family law following Brexit’ (2017) *Family Law* 399, 405

<sup>47</sup> European Union (Withdrawal) Bill, s.7(2)(c)

<sup>48</sup> Lowe (n 10), 404

<sup>49</sup> AIRE Centre, ‘The UK’s Continued Participation in Hague Instruments Following Brexit’ (“Brexit – Does Brexit really mean Brexit for Family Law?” Conference, London, 26 June 2017)

<sup>50</sup> [Research by the Children’s Commissioner for England](#) has revealed that up to 15,000 British children are growing up in ‘Skype’ families because the UK Immigration Rules introduced in July 2012 do not allow both of their parents to live together in the UK. This number is likely to increase without special arrangements to sustain the measures put in place by EU family law.

## Recommendations

- Remaining part of the EU family framework, with the CJEU acting in an advisory capacity, offers the best protection for children's rights.
- The UK Government should adopt the terms of the Recast *Brussels IIbis* Regulation which includes enhanced protections for children's rights in cross-border family cases.
- If, alternatively, the UK Government intends to fall back on the Hague Conventions, then clear statements must be given on how these Conventions shall apply upon Brexit so that there is no "gap" in family law protection. Additional guidance should also be put in place to ensure that children's rights protection is at least comparable to that currently operating under the *Brussels IIbis* regime
- A fast track process should be available for all cross-border cases involving children to expedite decision-making.

# Section 6

## Specific implications of Brexit for children and young people in Ireland, North and South

### Context

Brexit will have significant implications for children living in the different jurisdictions in the UK. While the impact will differ according to jurisdiction it is in relation to Northern Ireland (NI) that the potential for the most adverse impact on children is greatest. Ireland is the only jurisdiction with a land border with an EU state. The implications of enforcing any Brexit which does not take full account of the daily reality of the lives of children living in NI will have far reaching impacts on the children and young people living in both jurisdictions. Worryingly Brexit presents risks of destabilising the Peace Process by undermining the Peace Settlement/Good Friday Agreement.

Children in NI, and not just those living close to the border, live their lives “across” what has become an increasingly seamless border.<sup>51</sup> Houses and farms which pepper the border counties span both NI and the South. There are an estimated 23,000 commuters crossing the border on a daily basis for work purposes and an estimated 1,852,000 car crossings per month along the North South border. That figure does not include people crossing the border for non-work purposes, including children crossing to attend school or hospitals. Traveller children move with their families between the North and South of Ireland on a regular basis. Children socialise across the border, crossing it to play sports, attend concerts and to access leisure facilities. They live in one jurisdiction and have part-time jobs across the road in the other jurisdiction.

The EU has financially supported the peace process. EU cross border funding for Ireland/NI, including Peace funding between 1994-2020, will total €2.8 billion. Many projects which support vulnerable young people have been and are funded through EU Peace and INTERREG Programmes. These have been critical in building peace, supporting young people in transitioning from conflict and preventing young people born post ceasefire from being drawn into paramilitary groups.

### Concerns

#### The Good Friday Agreement and Human Rights

The human rights and equality provisions of the Good Friday (Belfast) Agreement have secured many institutional human rights reforms across the island of Ireland. As a result of the Agreement, by ratifying and giving further effect to the European

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Convention on Human Rights, the British Government put in place a legal framework that would help protect all people, including children, from human rights abuses.

Brexit must not undermine the ECHR and other human rights instruments in the Agreement, including EU derived rights. Brexit risks creating major instability for Northern Ireland particularly in the border counties and pose challenges for Westminster. This is precisely the time that human rights instruments are needed to put limitations on potential excessive state actions, and indeed, actions by dissident paramilitaries.

The Northern Ireland Act 1998 is the legislative outworking of the Good Friday Agreement and the basis of the devolution settlement. The Withdrawal Bill as currently drafted undermines the principle of devolution, which was at the heart of the peace agreement reached in Northern Ireland. Devolution was intended to allow NI politicians the ability to pass laws which reflect the unique, particular circumstances of a society which has been adversely affected by decades of conflict. Clause 11 and Schedule 2 of the Withdrawal Bill undermines this concept by preventing devolved authorities in NI from amending retained EU laws in a way that is not consistent with UK government policy.

It should also be noted that a principle contained within the Good Friday Agreement is equivalence of rights protections between persons in the Republic of Ireland and Northern Ireland. The Withdrawal Bill threatens the ability of this principle to operate effectively in the future, particularly where devolved Government in Northern Ireland will not be able to develop rights and equality protections in a way that is inconsistent with UK Government policy.

Any undermining of the human rights and equality protections enjoyed as a result of the Good Friday Agreement threatens children's rights.

### Citizenship, Legal Rights and Entitlements of Children

The Good Friday (Belfast) Agreement means that people born in the North have the right to have Irish or British or dual citizenship. This right should not be affected by any future change in the status of Northern Ireland. Irish citizens in the North cannot be denied their Irish citizenship and the **full enjoyment of EU rights** which flow from that citizenship.

There is also a concern about the impact of Brexit on the ability of children in the Republic of Ireland and in Northern Ireland, to access health, education and care services across the border. The Common Travel Area between Britain and Ireland together with EU free movement rights have ensured that Irish children living in the UK, and British children living in Ireland, have generally been able to access services on an equal footing. The Department of Education NI, for example, has confirmed that at least 600 school children live on one side of the border, but attend school on the other side of the border. Children from NI commonly access critical, and

sometimes lifesaving services in the Republic of Ireland through a process known as Extra Contractual Referrals facilitated by EU Healthcare Directives. These children often have complex needs including mental health needs. Children from the South similarly access services in the UK. In the absence of ongoing cross-border measures, children will be unable to access these crucial services. Maintaining relationships with family and friends living across the border will also become more difficult in the absence of regular, face-to-face contact.

## **Recommendations**

Any Brexit deal between the EU and the UK must clearly recognise the unique position and vulnerability of children on the island of Ireland. It is imperative to protect the integrity of the Good Friday Agreement in its entirety, as an international peace treaty lodged with the United Nations and co-signed by both the UK Government and the Irish Government. In that context we note that the two Governments are expected to act as co-guarantors of the Agreement, ensuring its full implementation.

It is therefore critical that:

- The UK government should include a clause in the Withdrawal Bill that explicitly commits to maintaining the current levels of equality protection in the UK and in particular in Northern Ireland when existing EU law is transposed into domestic law.
- There should be a clause inserted in the Withdrawal Bill that protects the status of the Good Friday Agreement in its entirety as an international peace agreement to ensure that Brexit does not negatively impact the Peace Process in Northern Ireland.
- In relation to children who were born in Northern Ireland and can hold Irish citizenship by virtue of the Good Friday Agreement, the British Government must fully protect and future proof the EU rights of those children and provide clarity as to how it will facilitate those children to continue to fully exercise their rights and fully enjoy the benefits of EU citizenship post-Brexit.
- The Government must ensure that Irish children<sup>52</sup> living in the UK, and British children living in Ireland continue to be able to access services on an equal footing. These rights should be fully considered and clearly protected in any settlement relating to Irish children residing in the UK and British children living in Ireland.

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<sup>52</sup> In this context “Irish children” are those who have exercised their free movement rights to live in the UK as opposed to children born in NI who by virtue of the Good Friday Agreement have defined as Irish citizens.

- The Common Travel Area should be maintained between Ireland and the UK and the rights of Irish children resident in the UK and the rights of British children resident in Ireland should be specifically protected.

# Section 7

## Ensuring that the views of children and young people are heard and taken seriously

### Context

It is widely accepted that Brexit – both the referendum itself and ensuing discussions and consultations – has not engaged sufficiently with the voices of children and young people, the population who will potentially be most impacted in the long term. Article 12 of the UNCRC requires the UK Government to enable children under the age of 18 to express and have their views given due weight in all matters affecting them. They should be given meaningful opportunities to have their opinions heard on issues related to Brexit by decision-makers, and should be included in discussion so that their rights are championed as part of the process.<sup>53</sup>

There have been several general consultations with children and young people about their views on Brexit, some of which are ongoing. These include:

- The All-Party Parliamentary Group on a Better Brexit for Young People in partnership with **My Life My Say** are working to serve as a platform for engaging with young people across the UK and feeding their views back to decision makers.<sup>54</sup> They have conducted the largest consultation on Brexit to date, involving 352 young people aged 11- 30 across the UK in focus groups. <sup>55</sup> The majority of the participants were over 16, although some younger children took part in some of the focus groups. The project has a specific focus on connecting young people to politicians.
- The London School of Economics' European Institute has launched a public engagement project, **Generation Brexit**, which aims to make young people's voices heard in the Brexit negotiations by inviting participants aged 16-35 to 'debate, decide and draft policy proposals' to be sent to Westminster and Brussels.<sup>56</sup> This project targets those both in the UK and in other European countries.
- The **Northern Ireland Young Life and Times survey** (a representative survey of 16 year olds). In 2016 it found that 72% of respondents, if able to vote, were in favour of the UK remaining part of the EU; and that over two-thirds of respondents felt that they would be worse-off outside the EU – with only 14% thinking they would be better off. <sup>57</sup>The survey questions, commissioned by the British Council, did not address specific issues of concern.

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<sup>53</sup> Eurochild, *Statement and Call to Action on the Impact of Brexit on Children and Young People*, available at [http://crae.org.uk/media/121611/statement\\_call\\_to\\_action\\_impact\\_of\\_brexit\\_on\\_children\\_and\\_young\\_people\\_19jne2017\\_eurochild.pdf](http://crae.org.uk/media/121611/statement_call_to_action_impact_of_brexit_on_children_and_young_people_19jne2017_eurochild.pdf)

<sup>54</sup> *My Life My Say's* website <http://www.mylifemysay.org.uk/about-mlms/>.  
<https://drive.google.com/file/d/0B4cwxGLbY8aLd05uSIIgWW5kUDA/view>

<sup>55</sup> They also conducted a survey of those aged over 18.

<sup>56</sup> Information available at <https://generationbrexit.org/> and <http://blogs.lse.ac.uk/brexit/2017/06/23/youth-dont-vote-is-the-brexit-generation-changing-that/>

<sup>57</sup> <https://nireland.britishcouncil.org/about/press/northern-ireland-s-16-year-olds-oppose-brexit>



- **First news** – an online news-site for children – states that it consulted hundreds of children in the development of a charter for Brexit. Key issues identified by the children were free movement, security, the environment and to ‘make sure all the people from other EU countries already in the UK are allowed to stay, and make sure British citizens in other EU countries can stay there’.<sup>58</sup>
- The **British Youth Council** conducted a survey of over 1000 children and young people aged 11-25 with follow up focus groups of over 500 children, exploring their attitudes to Europe. The research took place before and after Brexit; in the focus groups many participants identified Brexit as a source of concern.<sup>59</sup>

Other consultations on the specific issues that children and young people would like to see addressed in relation to Brexit have been on a relatively small scale and have not extended across the UK.<sup>60</sup> In much of the existing research and consultation, children express frustration at not being able to vote or influence the debates.<sup>61</sup> These consultations have, for the most part, tended to focus on the views of older young people (generally 16 plus). They have, however, identified a number of issues of concern to children and young people that will warrant further attention as Brexit negotiations move forward. These include: student mobility; employment prospects; free movement in Europe; protections for migrants; impact for those on the Irish border and the Northern Ireland peace process.

## Concerns

While the consultations to date have provide valuable opportunities for children to be heard, significant gaps remain. For consultation to be rights-respecting, it should meet the requirements of Article 12 of the UNCRC and its associated provisions. The key qualities of rights-respecting child participation are summarised in Figure 1.<sup>62</sup>

<sup>58</sup> <https://live.firstnews.co.uk/news/first-news-childrens-charter-brexit/>

<sup>59</sup> <http://www.cypnow.co.uk/cyp/news/2003925/survey-highlights-brexit-concerns-among-young-people>

<sup>60</sup> <http://www.swansea.ac.uk/law/news/brexit-event-debate-the-future-for-children-in-wales.php>;  
<https://www.niyf.org/2017/02/26/young-people-across-ireland-have-their-say-on-brexit/>;  
<http://www.niccy.org/about-us/the-commissioner/commissioners-blog/brexit-what-s-a-good-deal/>  
 Department of Children and Youth Affairs (2017) *Sectoral Dialogue with Children, Young People and Other Stakeholders Regarding the Impact on the Lives of Children and Young People of the UK's Decision to Leave the EU*, available at  
<https://www.dcy.gov.ie/documents/publications/20170309SectoralDialogueChildrenandYoungBrexit.pdf>

<sup>61</sup> See for example, research with children in Wales: <http://blogs.cardiff.ac.uk/wiserd/2017/04/21/they-shouldve-let-us-vote/>; and by the BBC with 11-16 year olds across the UK: <http://www.bbc.co.uk/news/av/uk-politics-39417719/what-do-school-children-think-about-brexit>.

<sup>62</sup> The Lundy model of child participation was first published as Lundy, L., 2007. ‘Voice’ is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child. *British Educational Research Journal*, 33(6), pp.927-942. The evaluation tool was developed for the Irish National Participation Strategy (2015): <https://www.dcy.gov.ie/docs/national-strategy-on-children-and-young-people-s-participation-in-decision-making/3456.htm>

The model has been adopted by a range of national and international organisations including the European Commission: [https://www.google.co.uk/search?q=Lundy+model+urope&ie=utf-8&oe=utf-8&client=firefox-b-ab&qfe\\_rd=cr&dcr=0&ei=7ZXLWbntL6fA8geg07DwDA](https://www.google.co.uk/search?q=Lundy+model+urope&ie=utf-8&oe=utf-8&client=firefox-b-ab&qfe_rd=cr&dcr=0&ei=7ZXLWbntL6fA8geg07DwDA)

Figure 1 – key qualities of rights-respecting child participation



Applying this evaluation tool, it is clear that there is further work needed to ensure fully rights-compliant consultation in relation to Brexit.

- **Space:** Much of the existing work has focused on over-16s. Younger children may have different issues and concerns and need the space to express these. There also needs to be targeted consultation with children in particular groups who may have distinct concerns.
- **Voice:** Children are entitled to receive help in forming as well as expressing views. Many children will not fully understand how some issues may affect them and will need accessible information and support to form and express their views. Consultations which ask them what they think about Brexit are not sufficient in this respect. An effective way of identifying the relevant positive and negative provisions of EU membership has been to begin by providing children with opportunities to express concerns in their own lives, and then draw links to European policy.<sup>63</sup>

<sup>63</sup> Larkins, C. (2011) 'Can the EU live up to the expectations of its child citizens?' *International Journal of Children's Rights Special Issue: Children and the European Union*, Vol. 19(3), 451-476.

- **Audience:** Governments have an obligation to consult children directly. Currently, only the Welsh government has committed to doing so. When other parts of civil society are carrying out this work, children should understand to whom their views are being given and whether and how the people involved can help them get heard and effect change.
- **Influence:** Children's views must be given due weight, as appropriate. There should be full and effective feedback arrangements where children are told how their views have been taken into account and, if the outcome is contrary to their expressed views, why this is so.

## Recommendations

Given the obligation on government to seek children's views and to give them due weight, it is recommended that:

- Children and young people across the UK, including in each of the devolved nations, should be given substantive opportunities to be heard using both formal and informal mechanisms (e.g. social media), and to influence Brexit discussions and negotiations. This should include participation in surveys, opportunities for group discussions (for example in schools) and direct engagement with decision makers on specific, substantive issues.
- The views of children of all ages should be sought and taken seriously, not just those aged 16 and over.
- Consultation should be sufficiently inclusive of diverse groups of children and young people. For example, there should be appropriate and accessible consultations with children with disabilities, children living on the border with the Republic of Ireland, children of migrant workers and children in diverse contexts across the UK.
- Children and young people should be provided with accessible information so that they can understand the potential implications of the full range of issues affecting them, and are in a position to contribute meaningfully to Brexit discussions.
- They should be provided with direct opportunities to communicate with decision-makers and should receive feedback as to how their views were given due weight and how, if at all, they have impacted on decision-making.
- Children should know where their views are going, whether their audience has the power to effect change, and how their views were taken into account.

# Conclusion

It is clear that the UK's withdrawal from the European Union will impact significantly on the lives of children and young people, and yet to date there has been very little consideration of this impact. The EU legal framework has played a key role in providing protection for children in areas such as migration, asylum, child protection, access to social and economic rights and cross-border family breakdown.

This paper has provided an overview of the most pressing issues for children and young people. The context, concerns and recommendations presented in this briefing paper are informed by the leading expertise and most up-to-date evidence of members of this coalition. We have drawn on our extensive technical knowledge of children's rights under EU law and policy, and on our significant front-line experience of working with and campaigning for children across the range of areas covered in this report.

A crucial means of protecting the UK's interests following Brexit lies in achieving comprehensive and robust protection for the rights of children. The future prosperity of the UK lies in their hands.