

UK WITHDRAWAL FROM THE EU - 'BREXIT' Implications for Children and Young People in Northern Ireland

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INTRODUCTION

The Northern Ireland Commissioner for Children and Young People was established in accordance with The Commissioner for Children and Young People (Northern Ireland) Order 2003, to ‘safeguard and promote the rights and best interests of children and young people in Northern Ireland’. The Commissioner has a duty to keep under review the adequacy and effectiveness of law, practice, and services relating to the rights and welfare of children and young people as provided for them by relevant authorities. In undertaking our work we must have regard to the UN Convention on the Rights of the Child alongside the views and experiences of children and young people.

In previous reports (see below), we highlighted our concerns around the potential erosion of rights, and concerns as outlined in the joint work carried out by children and young people from across Northern Ireland / Ireland -

facilitated by NICCY and our Ireland counterpart, the Ombudsman for Children (OCO) – resulting in “It’s Our Brexit Too: Children’s Rights, Children’s Voices” report¹ (www.niccy.org/Brexit).

This was widely disseminated and members of the young people’s steering group visited Westminster and Brussels to speak with key stakeholders and decision makers, including Members of the Brexit Committee, House of Lords, Members of the European Parliament and Taskforce 50. Young people reiterated their issues as well as their sense of ‘exclusion’ from decision making over which they had no vote, no say in, but which will impact their futures.



¹ www.niccy.org/brexit



You can [view this report here](#).

Since then NICCY has continued to engage with NI Government Departments on arrangements for 1st January 2021 following the end of the transition period.

The UK government is hailing agreement on implementing the Northern Ireland part of the Brexit Withdrawal Agreement as "pragmatic and proportionate"². As stated, by implementing the protocol, Northern Ireland will remain in the single market and EU customs rules will be enforced at its ports.

² <https://news.sky.com/story/brexit-no-eu-mini-embassy-in-belfast-as-a-result-of-irish-border-deal-michael-gove-says-12156228>

Children's and Young People's Rights

The Protocol to the Withdrawal Agreement (WA)³ which became UK domestic law in January 2020, affirms the protection of rights which has been a focus. Much debate has ensued over the 'loss' of rights including that of the EU Charter of Fundamental Rights. Under the European Union (Withdrawal) Act 2018, all existing EU-derived laws were converted into UK domestic laws.

While the Government has stated that they are dedicated to the UNCRC in relation to extensive children's rights, there are concerns that the Government will repeal, amend or re-introduce Henry VIII powers in the House of Commons legislative decisions post-Brexit, and could be made with minimal scrutiny.⁴

Following a meeting with the NICCY Youth Panel delegation in 2018, Baroness Lister⁵ in a House of Lords debate, voiced her strong opposition to its removal and proposed an amendment providing for full incorporation of the UN Convention on the Rights of the Child ratified by the UK. At a recent evidence session⁶ with the Ad Hoc Committee on a Bill of Rights for Northern Ireland⁷, NICCY called again for its incorporation, in line with the UNCRC Committee's 2016 Concluding Observations⁸ to:

'Expedite bringing in line with the Convention its domestic legislation, at the national and devolved levels and in the overseas territories and the Crown dependencies, in order to ensure that the principles and provisions of the Convention are directly applicable and justiciable under domestic law;' 7(a).

³ <https://www.legislation.gov.uk/ukpga/2020/1/contents/enacted> A Bill to implement, and make other provision in connection with, the agreement between the United Kingdom and the EU under Article 50(2) of the Treaty on European Union which sets out the arrangements for the United Kingdom's withdrawal from the EU.

⁴ <https://www.carecheck.co.uk/how-will-brexit-impact-safeguarding/>

⁵ [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)

⁶ Ad Hoc Committee on the Bill of Rights for Northern Ireland: NICCY Session 2 July 2020

⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf Para' 28.

⁸ <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhskHOj6VpDS%2F%2FJqg2Jxb9gncnUyUqbnuttBweOlylfyYPkBbwffitW2JurgBRuMMxZqnGgerUdpjxij3uZ0bjQBOLNTNvQ9fUIEOvA5LtW0GL>

The commitment to ‘no diminution of rights’ caused by the UK’s departure from the European Union, including the protection against forms of discrimination enshrined in EU law, is reflected in Article 2 (‘Rights of individuals’) of the Ireland/Northern Ireland Protocol to the Withdrawal Agreement. It is therefore binding on the UK Government and Parliament, the Northern Ireland Executive and the Assembly as a matter of international law (notwithstanding concerns regarding the Internal Market Bill; on 1 October 2020 the European Commission had announced it was launching an infringement procedure against the UK)⁹.

The UK Government has also committed to ‘facilitating the related work of the institutions and bodies, established by the **Good Friday Agreement** (GFA), in upholding human rights and equality standards.¹⁰ The Protocol affirms that:

the Good Friday or Belfast Agreement of 10 April 1998 between the Government of the United Kingdom, the Government of Ireland and the other participants in the multi-party negotiations (the ‘1998 Agreement’), which is annexed to the British-Irish Agreement of the same date (the ‘British-Irish Agreement’), including its subsequent implementation agreements and arrangements, should be protected in all its parts¹¹

This was further ‘explained’ in a UK Government document issued in August 2020:

‘The UK Government’s approach to withdrawal from the European Union (EU) has been underpinned by our steadfast commitment to upholding the Belfast (‘Good Friday’) Agreement (“the Agreement”) in all its parts. This includes its provisions on citizenship and identity. We acknowledge the importance of the rights and equality protections set out in the Agreement, which recognise the unique circumstances of Northern Ireland’s history and the need to put rights and equality central to creating a peaceful and shared future in Northern Ireland.¹²

⁹ <https://www.instituteforgovernment.org.uk/explainers/brexit-deal-infringement-procedure>

¹⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/665869/Joint_report_on_progress_during_phase_1_of_negotiations_under_Article_50_TEU_on_the_United_Kingdom_s_order

¹¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840230/Revised_Protocol_to_the_Withdrawal_Agreement.pdf

¹² ‘Explainer_UK_Government_commitment_to_no_diminution_of_rights_safeguards_and_equality_of_opportunity_in_Northern_Ireland’. <https://www.gov.uk/government/publications/protocol-on-irelandnorthern-ireland-article-2>

Young People have consistently voiced concerns around identity rights given the legacy of the Conflict and ‘particular circumstances’ pertaining in Northern Ireland at meetings with decision makers at Westminster and EU levels.

In 2017 the UK ‘Northern Ireland and Ireland position paper’ stated *‘As long as Ireland remains a member of the EU, Irish citizenship also confers EU citizenship, with all the rights that go with this.’ This is as true for the people of Northern Ireland who are Irish citizens - or who hold both British and Irish Citizenship – as it is for Irish citizens in Ireland.*¹³

There remains however, the ongoing concerns that Brexit will undermine the ‘equivalence of rights’ due to ‘differentials’ in EU rights (assuming these are available) and UK rights, for those who identify as British citizens. As such this could over time, exacerbate divisions between the two main identities in Northern Ireland despite the GFA stated birthright for people here *‘to identify as British or Irish or both, as they may so choose; to equal treatment irrespective of their choice’.*

‘For example, a British citizen here should not feel compelled to assume a national identity (Irish) that she has no wish to ascribe to. Yet that is the precise long-term risk in a context where British citizens will be third country nationals for EU purposes. It is as potentially offensive to tell a British person that she is really Irish (and should just get an Irish passport) as it is to tell an Irish person that she is British. That is the wrong way forward. What we need is a process of levelling up, in other words, a sustained effort to improve guarantees for everyone in ways that respect constitutional differences, and acknowledge the fact that Irish citizens will remain EU citizens.’¹⁴

The Good Friday Agreement effectively brought an end to Northern Ireland’s violent conflict and established a number of co-operation mechanisms i.e. North-South and East-West bodies, one of which was the Joint Committee.¹⁵ Set up to consider human rights issues on the island of Ireland, the Committee sought assurances from both Governments that no rights would be diluted, outlined areas to be addressed to mitigate concerns around citizenship rights and North-South equivalent equality and human rights protections.

¹³ HM Government ‘Northern Ireland-Ireland Position Paper’ 16 August 2017

¹⁴ <https://www.newsletter.co.uk/news/politics/colin-harvey-members-unionist-community-are-likely-suffer-result-brex-it-little-conversation-about-959716>

¹⁵ Press release by IHREC from the Joint Committee on Human Rights 14 March 2018.

The restoration of the Northern Ireland Assembly in January 2020 and publication of the 'New Decade, New Approach' (NDNA) Deal saw a reaffirmation of Parties' commitment to the principles of power-sharing and cross community protection contained in the Belfast (Good Friday) Agreement including that to the Bill of Rights for Northern Ireland.¹⁶

An Ad-Hoc Assembly Committee will be established to consider the creation of a Bill of Rights that is faithful to the stated intention of the 1998 Agreement (further that) the Panel should initially seek to advise the Ad-Hoc Committee on what constitutes our "particular circumstances" drawing upon, but not bound by, (our emphasis) previous work on a Bill of Rights and should review and make recommendations on how the UK's withdrawal from the EU may impact on our "particular circumstances" .¹⁷

Hence NICCY's call for incorporation of the UNCRC and similarly again the UN Committee on the Rights of the Child had recommended that the UK State Party:

'Expedite the enactment of a bill of rights for Northern Ireland, agreed under the Good Friday Agreement.'¹⁸

It is to be hoped that progress can be made towards these goals to embed rights protections for our children and young people and their futures.

¹⁶https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf Annex C. Para' 3.1

¹⁷https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf S.5.26 & 5.28.

¹⁸⁷(b)<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhskHOj6VpDS%2F%2FJqg2Jxb9gncnUyUgbnuttBweOlyfyYPkBbwffitW2JurgBRuMMxZqnGgerUdpjxij3uZ0bjQBOLNTNvQ9fUIEOvA5LtW0GL>

Impact on Daily Life

It has been well rehearsed that Children and Young People did not get a say in the 2016 Referendum vote, it will however significantly impact their lives on a daily basis in many ways.

Brexit presents challenges for some children and their **right to family life** and relationships. Children live in a different world to that of their parents and grandparents including the ‘virtual’ online world¹⁹.

This will require determined and committed efforts to ensure every child can face the future in safety and security.

Withdrawal from the EU puts a responsibility on government and all relevant authorities to review the ‘guarantees’ and protections we provide for our children and young people.

Particular areas for attention as we make the transition include:

- The citizenship or residence status of children, especially for children brought up in the UK, and those brought up in local authority care;
- The citizenship or residence status of the parents of children brought up in the UK;
- An impact assessment of the changes in EU funds to ensure that children accessing services currently funded by the EU do not experience any unfair disadvantage due to the UK’s withdrawal from the EU;
- Current provisions of international commitments to support and protect children are maintained and enhanced; and
- Making a concerted effort to promote community cohesion and prevent children from experiencing xenophobic bullying and intimidation.²⁰

The European Health Insurance Card (**EHIC**)²¹ will no longer be available post January 2021. However, if already held, it will be valid for UK students who started a course in the EU before the end of 2020 until their course finishes – this entitles them to access medically necessary state healthcare.

¹⁹ From 1 January 2021, the guarantee of free mobile phone roaming throughout the EU (as well as in Iceland, Liechtenstein and Norway) will end.

²⁰ [Ibid](#)

²¹ <https://www.gov.uk/visit-europe-1-january-2021>

For so called 'frontier workers' - people who work in one state and live in another, they will also retain EHICs. People in both categories will, however, need to apply for new cards.

In relation to the **Erasmus**²² scheme - a European Union (EU) programme that helps students study in other countries - the government hasn't yet formally decided whether the UK will continue to take part in this scheme in the future, but it has committed to continue to fund a new UK-wide replacement programme if it does not end up participating in this.

*"The government remains open to participation in elements of Erasmus+ on a time-limited basis, provided that the terms are in line with UK interests and we can agree a fair and proportionate financial contribution."*²³

A House of Lords EU Committee²⁴ has warned the benefits of the programme would be very difficult to replicate with a national programme, that vocational education and training would stop and that leaving Erasmus would *"disproportionately affect people from disadvantaged backgrounds and those with medical needs or disabilities"*. There will also be the new immigration regime for students to take into account.

Under the **EU Settlement Scheme (EUSS)**, EU (other than Irish citizens), EEA, and Swiss citizens and their family members will need to apply to the EU Settlement Scheme²⁵ to stay in the UK after 30 June 2021. This new immigration system applies from 1 January 2021 when freedom of movement ends and the UK moves to a new points based system for people wanting to work.

Those living legally in the UK for 5 years will be eligible for 'settled status' and free to live and work in the UK indefinitely. Those living in the UK for less than 5 years at the time of application, are granted 'pre-settled status'. When the 5 year period is reached, they can apply for 'settled status'. If EU nationals fail to secure settled or pre-settled status, they risk losing their right to remain in the UK beyond the June 2021.

Outstanding issues in respect of affected 'looked after children' and frontier workers including their children, in respect of crossing the land border are currently being addressed.

²² <https://www.bbc.co.uk/news/education-47293927>

²³ <https://www.bbc.co.uk/news/education-47293927>

²⁴ <https://publications.parliament.uk/pa/ld201719/ldselect/ldeucom/283/283.pdf>

²⁵ <https://www.nidirect.gov.uk/articles/staying-northern-ireland-if-youre-eu-citizen>

There will be no change to the rights and status of EU citizens currently living in the UK until the 'grace period' deadline of 30 June 2021.²⁶

The Independent Monitoring Authority (IMA) for Citizens' Rights Agreements (IMA) has been established to protect the rights of EU and EEA EFTA (Iceland, Leichtenstein and Norway) citizens in the UK and Gibraltar. It will do this by '*monitoring UK public bodies to make sure they implement the rights of these citizens and by identifying any underlying issues.*'²⁷ It is independent of government and will be operationally ready to take complaints from 31 December 2020.

Concerns remain in relation to **food security and standards**. Media headlines such as that in The Independent (11 October 2020), '*MPs to be denied vote on Brexit food standards*' heighten these. The article claimed an obscure rule preventing an amendment to the Agriculture Bill, was used to deny MPs a vote '*aimed at blocking imports of chlorinated chicken and hormone-fed beef, sparked fresh fears about food quality post Brexit.*' Some supermarkets have expressed concerns about the availability of foods particularly fresh foods, while they may try sourcing from elsewhere, that would increase costs. There are 'market adjustments' being made, we are informed, with the potential to extend 3 month and 6 month grace periods.

A priority for young people is **the environment** and the impact of climate change. There has clearly been insufficient attention paid to this issue during Brexit discussions however, it is important to note that as Alison Hough points out in her report, effective cross-border co-operation and co-ordination is vital in avoiding barriers to protecting it²⁸:

"Despite being divided into two different sovereign territories and being home to three simultaneous political entities (Ireland, Northern Ireland and the UK), the unavoidable reality is that the island of Ireland is a single bio-geographic unit, with common geology, landscapes, water catchments, and flora and fauna. Effective environmental protection requires a co-operative and coordinated approach between Northern Ireland, Ireland and the UK" (p.5).

²⁶ <https://www.gov.uk/apply-for-a-uk-residence-card>

²⁷ <https://ima-citizensrights.org.uk/>

²⁸ Alison Hough, "Brexit, the Good Friday/Belfast Agreement and the Environment: Issues arising and possible solutions" (April 2019), <https://nienvironmentlink.org/cmsfiles/Brexit-GFA-report-FULL.pdf> [last accessed 21/05/2019].

The ‘Dedicated Mechanism’

The Protocol on Ireland/Northern Ireland²⁹ has created dedicated mechanisms comprising the NIHRC, the ECNI and, for issues with an all-island dimension, the joint committee of the NIHRC and the IHREC.

The United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Protocol, and shall implement this paragraph through dedicated mechanisms.

(Article 2 (1) Rights of Individuals)

The new duties and powers conferred on both the NIHRC and the ECNI are *to monitor, supervise, advise, report and enforce the non-diminution commitment*³⁰ - following having been provided adequate resources to ensure these enhanced roles can be performed effectively. It also provides for both the NIHRC and the ECNI to take cases in their own names i.e. ‘own initiative’ powers.

The specific rights contained within the ‘Rights, safeguards and equality of opportunity’ section of the 1998 Agreement cover:

- The right of free political thought;
- The right to freedom and expression of religion;
- The right to pursue democratically national and political aspirations;
- The right to seek constitutional change by peaceful and legitimate means;
- The right to freely choose one’s place of residence;
- The right to equal opportunity in all social and economic activity regardless of class, creed, disability, gender or ethnicity;
- The right to freedom from sectarian harassment; and
- The right of women to full and equal political participation.

²⁹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840230/Revised_Protocol_to_the_Withdrawal_Agreement.pdf

³⁰ <https://www.lag.org.uk/article/206250/post-brexit-human-rights-in-northern-ireland>

This section also covers the rights of victims of violence during the conflict to contribute to a changed society and have their voices heard, the promotion of social inclusion, including, in particular, community development, the advancement of women in public life, and respect for and promotion of linguistic diversity, including the Irish language, Ulster Scots and the languages of other ethnic communities.

The provisions of EU law referred to under Article 2(1) are the following Directives³¹:

1. Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services;
2. Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation;
3. Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;
4. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;
5. Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC⁵;
6. Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

NICCY looks forward to working with the NIHRC and ECNI to address the potential direct and indirect impacts on children and young people in terms of rights, access to services, quality of life and standards of living.

³¹ Ibid.

The Economy and Impact on Standard of Living

The Brexit transition period, during which the UK has kept to EU trading rules, ends on 31 December. The UK and EU are yet to agree a deal that will govern their future trade. The Northern Ireland protocol is to be operational by January 2021 (even if the UK and EU do not reach a trade deal). Northern Ireland will continue to follow EU customs rules, even though it remains part of UK customs territory. The 'New Decade, New Approach' deal in January 2020 notes the challenges facing the 'restored' NI Executive stating:

An immediate and significant challenge facing the Executive is in relation to dealing with the impact of Brexit. In recognising the potential for widespread and significant implications across all aspects of social and economic life.³²

NICCY has consistently noted the potential concerns facing Northern Ireland's economy and the impact/s on families' income levels and subsequent standards of living. These included potential increase to the already concerning levels of child poverty, loss of EU funding streams, farming CAP subsidies, and the impact on businesses.

Recently acknowledging the impact of the Covid-19 pandemic on business and jobs, the CBI commended the Government's job retention 'furlough' scheme which:

*'has been a lifeline for thousands and firms and millions of workers, helping minimise levels of unemployment as the economy responding to the immediate impacts of the COVID-19 pandemic.'*³³

In the context of Brexit, this is of vital concern for reasons noted above. Northern Ireland has been a major beneficiary of a number of **EU funding streams**, including the EU Social Fund, PEACE funding and INTERREG funds. The UK Government EU structural funding is worth about £2.1 billion per year - used for 'boosting several aspects of economic development, including support for businesses, employment and agriculture' and administered by the different jurisdictions of the UK. Northern Ireland receives €500million per annum – given NI also contributes to monies paid by the UK to the EU, '**A more complete statement would be to say that Northern Ireland receives €55/£45million**

³²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf S4.6.8

³³ <https://www.cbi.org.uk/articles/westminster-update-11-september/>

*more than we pay to the EU.*³⁴ In the absence of PEACE and INTERREG funding, the SEUPB plans are ‘at an advanced stage of preparation.’³⁵ The UK Government is proposing a ‘Social Prosperity Fund’³⁶ and we await the details in a forthcoming consultation.

The ‘New Decade, New Approach’ deal issued in January 2020, set out the NI Executive’s planned ‘Party Leaders’ Forum’ and Executive Sub-Committee on Brexit to assess its impact. It also includes (in annex B) investment by the Irish Government in a wide range of support programmes for enterprise and the agri-food sector.

Concern remains that gaps in funding could result with the subsequent adverse impact on employment, family income levels and community services.

In September 2020, the UK Government introduced the Internal Market Bill designed to prevent trade barriers between the four nations of the UK after the transition period has ended. However, that the Internal Market Bill which ‘*expressly enables the UK to override the provisions of the Withdrawal Agreement (and therefore) may increase the likelihood of a no-deal outcome*’³⁷ was of grave concern to many in Northern Ireland – not least because of its potential impact on employment and family income levels.

NICCY welcomes the removal of Articles 44,45 and 47 of the Internal Markets Bill by the UK government which many believe would have broken international law.

In a recent survey, the IoD³⁸ had called on the Government to ‘pull out the stops to land a deal’, as a majority of its members affected by Brexit said their ability to prepare depended on the talks.

- Close to a third (29%) weren’t sure they would be ready by the end of the year;
- Around a quarter (26%) said they were fully prepared; and

³⁴ <https://factcheckni.org/articles/does-the-eu-send-ni-e500m-annually/>

³⁵ <https://www.seupb.eu/PEACE-PLUS-UPDATE>

³⁶ <https://commonslibrary.parliament.uk/research-briefings/cbp-8527/>

³⁷ <https://ukandeu.ac.uk/wp-content/uploads/2020/09/UKICE-What-would-no-deal-mean.pdf>

³⁸ <https://www.iod.com/news/navigating-brex-it-for-business/articles/brexit-deal-crucial-for-business-readiness>

- Among those affected by Brexit, the majority (57%) said that their ability to be ready was somewhat or entirely dependent on the negotiations, rising to nearly three quarters (72%) for those who weren't yet fully prepared.

Among the directors surveyed, the top priority was avoiding tariffs, followed by measures to support the movement of data and people between the UK and EU.

On 9 December 2020, as well as announcing agreement in principle on the Protocol, both sides have, through UK Government Cabinet Minister Michael Gove and European Commission Vice President Maros Sevcovic, announced agreement on arrangements on border controls for checks on animals, medicine supplies etc and the application of state aid, having agreed details of an EU presence in Northern Ireland to oversee how British officials administer checks on goods coming from Britain and elsewhere.

“....., the two co-chairs can now announce their agreement in principle on all issues, in particular with regard to the protocol on Ireland and Northern Ireland. An agreement in principle has been found in the following areas, amongst others: Border Control Posts/Entry Points specifically for checks on animals, plants and derived products, export declarations, the supply of medicines, the supply of chilled meats, and other food products to supermarkets, and a clarification on the application of state aid under the terms of the protocol”.

The Land Border on the Island of Ireland

The border between Northern Ireland and the Republic of Ireland is the UK's only land border with the EU. Moreover, it is a border which in the past, has been a source of contention and been heavily militarised during the conflict in Northern Ireland. However, since the Good Friday Agreement, considerable resources and efforts have been put into normalising the border region, removing the military infrastructure and ensuring the '4 Fs' i.e. freedom of movement of people, goods, services and capital, facilitated by membership of the EU. The border has become 'seamless', allowing such movement on either side of the border.

The Withdrawal Agreement 'settled' issues of citizens' rights, determined the UK's 'divorce' settlement and put in place long-term arrangements to avoid the re-emergence of a hard border between Northern Ireland and the Republic of Ireland, by introducing a regulatory and customs border in the Irish Sea.

The Protocol was originally devised precisely to ensure that, even if there was no UK–EU deal, there would be no physical border on the island of Ireland and the Good Friday Agreement would be upheld. If the UK explicitly rejects the Protocol that it has signed, it is hard to see an outcome that does not lead to significant political turbulence.³⁹

A 'hard border' would limit the '4 Fs' as well as damaging local border economies. Children and young people (and their families) currently travel across the border for a wide range of reasons e.g. to attend school or college, to access vital health services, to spend time with friends and family (particularly in cases of separated families) to go shopping, socialise or for leisure activities. Approximately 2000 children and young people cross the border to attend school, college or university every day.

The Common Travel Area (CTA) arrangements allow Irish citizens living in the UK or British citizens living in Ireland to live and travel freely i.e. no 'permissions' to enter or remain are necessary.

³⁹ <https://www.newlawjournal.co.uk/content/brexit-what-no-deal-could-mean>

The UK and Irish governments signed an MoU ‘reaffirming our joint commitment to the CTA, and to maintaining the associated rights and privileges of Irish and British citizens under this longstanding and reciprocal arrangement.’⁴⁰

Access to specialist healthcare services such as those in paediatric cardiology now based in Dublin is vital. The ‘Brexit Health Alliance’ has highlighted that key agreements are necessary to protect patients from 1 January 2021. Further,

‘new border arrangements and additional requirements on goods as well as regulatory barriers, could cause delays in release of medicines and medical technologies on to the UK market.’⁴¹

If no agreements around medicines are in place, the UK will have to set up its own regulatory processes outside of the EU’s regulatory network. Potential disruption at ports in the supply of medicines has already been highlighted as have particular concerns about those with a short shelf life. Similarly, if no agreement similar to the European Health Insurance Card (EHIC) is reached, the UK will ‘need to seek reciprocal healthcare deals with each individual EU country, who may or may not be inclined to agree.’⁴²

In 2017 the UK Government had stated that it and the EU ‘must agree an “ambitious” new **justice and security treaty** to combat terrorism and organised crime or the continent will face “increased risks” post-Brexit⁴³.’

In their second report the Independent Reporting Commission noted:

The real issue about the dangers for peace in Northern Ireland, therefore, is not that Brexit itself could be the direct cause of a renewal of violence, but rather that it has the potential to add fuel to the fire of continued paramilitarism. That is what Brexit has exposed and highlighted⁴⁴.

⁴⁰ <https://www.gov.uk/government/publications/memorandum-of-understanding-between-the-uk-and-ireland-on-the-cta/joint-statement-of-8-may-2019-between-the-uk-government-and-government-of-ireland-on-the-common-travel-area>

⁴¹ Brexit Health Alliance: _ BHS_How do we protect patients_Brexit transition FNL (002) pdf. *The Association of British HealthTech Industries estimates that 70 per cent of products, wherever manufactured, coming to the NHS are ultimately imported from the EU, and one in five devices used in specialised procedures arrive overnight or ‘just in time’.*

⁴² Ibid

⁴³ <https://www.ft.com/content/112c25f2-9c75-11e7-9a86-4d5a475ba4c5> Helen Warrell Financial Times September 2017

⁴⁴ https://www.ircommission.org/sites/irc/files/media-files/IRC%20-%202nd%20Report%202019_0.pdf

The Chief Constable Simon Byrne - who has submitted a funding bid for a three-year plan around the NI Protocol to the Treasury - in a recent report to the NI Policing Board stated:

“There is still a high level of uncertainty in relation to the UK Government’s ongoing negotiations with the EU and the potential for non-negotiated outcomes (NNOs) remains.” ⁴⁵

On 9 December, 2020, Cabinet Office Minister Michael Gove, outlined the details of the agreement on implementing the Northern Ireland protocol – having reached agreement on ‘all issues’ regarding how to avoid a hard border on the island of Ireland as agreed last year. Northern Ireland will stay in the EU single market for goods while the rest of the UK leaves, and will also continue to apply EU customs rules at its ports.

However, this is in a context of ongoing concerns that there remains a very high risk the new Irish Sea border will not be fully operational by 1 January. The National Audit Office (NAO) had also warned of this and identified potential shortfalls in software systems and staffing. The new permanent infrastructure is not to be finished until June 2021.⁴⁶

⁴⁵ <https://www.belfasttelegraph.co.uk/news/brexit/psni-chief-simon-byrne-warns-of-high-level-of-uncertainty-in-brexit-talks-39501210.html>

⁴⁶ <https://www.bbc.co.uk/news/uk-northern-ireland-54834450>

Security, Policing and Child Safeguarding

NICCY has significant concerns regarding the issues of policing and safeguarding. Currently there are approximately 80 EU instruments which entitle children to protection and welfare. Our land border exposes vulnerabilities to child abductions, child sexual exploitation, children going missing, and/or being trafficked to and through NI. A high degree of co-operation across the EU exists in relation to tackling crime through ECRIS (European criminal records information sharing), Europol, SIS II (a database of real-time crime alerts), Eurojust and the use of the European Arrest Warrant. It is recognised that a 'Future Security Partnership' (FSP) is necessary which would include the UK's relationships with the rest of the EU in terms of such mechanisms.

It is vital that **child protection and safeguarding** mechanisms either remain or are replaced with appropriate alternatives.

When ascertaining how the UK and EU will work together in the future, child safeguarding is a serious issue that transcends borders. We must ensure that the protection of children and vulnerable people are not relegated once the UK is no longer an EU member to avoid being cut out of crucial, complex and developing child protection mechanisms.⁴⁷

At time of writing negotiations including arrangements for an FSP continue and indeed are dependent on their outcome. It is NICCY's understanding that the ambition of the UK is to achieve this and that it would replicate many of the measures mentioned above, so the fight on crimes against children including missing and trafficked children, could continue (albeit in a potentially reduced fashion) as it does currently.

The PSNI and An Garda Síochána also collaborate and share intelligence across the island of Ireland; this is particularly important in safeguarding and protecting children and young people and vital that such arrangements are in place to do so. In the event that UK/EU negotiations are unsuccessful then reliance on older Council of Europe conventions may become a 'fall back' position whilst it is recognised this would a 'sub-optimal' situation.

⁴⁷ <https://www.carecheck.co.uk/how-will-brexite-impact-safeguarding/>

"There's a big difference for security between deal and no deal," says Julian King, the former EU Security Commissioner.... "(A) Deal would deliver a dialled down but still valuable relationship. No deal would mean cutting off co-operation on the fight against shared threats, from crime, cyber crime to violent extremism and terrorism."⁴⁸

Prior to the introduction of the European Arrest Warrant in 2002 which was designed to simplify extradition procedures, the process was much slower and more costly.

It tied up more government resources, left suspects at large or waiting in pre-trial detention, and left victims without justice for much longer periods of time..... The new system imposed strict times limits and a more streamlined process.⁴⁹

Alison Saunders, former director of public prosecutions in the UK, described the European Arrest Warrant as *"three times faster and four times less expensive than the alternatives"*.⁵⁰

From April 2010 to March 2020, the UK sent back 10,689 people wanted in other EU member states, and it got back 1,564 people wanted for a variety of offences including drug trafficking, rape and murder.⁵¹

The Schengen information sharing system (SIS II) as stated above, is based on real time alerts and enables a proactivity where a vulnerable child is at risk, including potential parental abduction and trafficking. After departure, we will no longer have access to this information, putting cross-border co-operation in jeopardy and children potentially in danger – hence the vital need for an FSP.

NICCY continues to be concerned that during and since the referendum there has been some evidence of **increased racism** and hostility towards ethnic minorities and migrants in Northern Ireland (and across the UK). Many EU/EEA nationals reported facing anxiety and uncertainty as they consider the potential impact of Brexit on their future status.⁵² Young people have been particularly concerned about this issue.

⁴⁸ <https://www.bbc.co.uk/news/54613967>

⁴⁹ *Ibid.*

⁵⁰ <https://theconversation.com/the-uk-is-leaving-the-european-arrest-warrant-and-extraditing-criminals-could-be-more-difficult-as-a-result-133579>

⁵¹ <https://www.bbc.co.uk/news/54613967>

⁵² Institute for Conflict Research. 'Brexit and eYou': information for EU/EEA nationals

*'In Northern Ireland, as elsewhere in the UK, there has been a significant public debate concerning an increase in attacks and harassment directed against migrant, asylum seekers and minority ethnic communities since the referendum vote.'*⁵³

In the recent review of Hate Crime legislation, the Equality Commission for Northern Ireland (ECNI) reiterated its call that:

*'policy responses to tackling hate crime should also take into account the potential for an increase in hate crime, particularly racist crime, post Brexit'*⁵⁴.

Further they recommended measures be put in place to tackle any increase due e.g. to Brexit and the Covid-19 pandemic.

⁵³ <https://brexitlawni.org/themes/brexit-xenophobia-racism-northern-ireland/>

⁵⁴ <https://www.equalityni.org/ECNI/media/ECNI/Consultation%20Responses/2020/DoJ-HateCrimeLawReview.pdf?ext=.pdf>

Conclusion

In conclusion NICCY can see the potential for UK withdrawal from the EU ('Brexit') to adversely impact on the rights of children and young people here across the range of areas – many of which are addressed in this paper.

Time is running out to reach a deal before 31 December. We are now aware that the UK Prime Minister Boris Johnson and EU Commission President Ursula von Der Leyen have agreed to further extend talks.

It is regrettable and concerning that calls made by the Commissioner in 2018 which were informed by the 'It's Our Brexit Too' project in 2017, still pertain and are as follows in the next section.

Calls to Government

Government must ensure no adverse impacts on children's and young people's rights and access to services as a result of UK withdrawal from the EU ('Brexit') through the following:

1. All aspects of the Good Friday Agreement must be protected including the right of people in Northern Ireland to identify as British, Irish or both. Moreover, the commitment to safeguarding human rights and the principle of equivalency of rights across the island of Ireland must be ensured;
2. The UK Government, Irish Government and European Union must work together to avoid physical infrastructure being located at or around the UK-EU border on the island of Ireland;
3. Safeguarding children and young people must be ensured through maintaining current security, policing and justice mechanisms similar to those provided through Europol, Eurojust, ECRIS, European Arrest Warrant and Data protocols in a 'Future Security Partnership';
4. The UK and Irish Governments must co-operate to ensure freedom of movement of people across the border is not impeded so that children, young people and their families continue to access services and facilities on either side of the border e.g. in relation to health, education, family life, sports, cultural and leisure activities;
5. The UK Government (post-Brexit) should commit to the continuation of financial support currently provided to Northern Ireland by the EU including through agricultural subsidies, structural funds and grants which contribute significantly to the Northern Ireland economy and alleviate child poverty / promote adequate standards of living - with a particular focus on disadvantaged groups and communities; and
6. Incorporation of the United Nations Convention on the Rights of the Child must be actioned to safeguard and promote the rights of all Children and Young People in Northern Ireland.

Should you have any queries about this paper, please contact Mairéad McCafferty NICCY Chief Executive on mairead@niccy.org

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