

UK Withdrawal from the EU

An overview of the potential impact on Children in Northern Ireland

July 2018

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Introduction

The Northern Ireland Commissioner for Children and Young People (NICCY) was created 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. Under Articles 7(2) and (3) of this legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. Under Article 7(4), NICCY has a statutory duty to advise any relevant authority on matters concerning the rights or best interests of children and young persons. The Commissioner's remit includes children and young people from birth up to 18 years, or 21 years, if the young person has a disability or is/has been in the care of social services. In carrying out her functions, the Commissioner's paramount consideration is the rights of the child or young person, having particular regard to their wishes and feelings. In exercising her functions, the Commissioner has to have regard to all relevant articles of the United Nations Convention on the Rights of the Child (UNCRC) - the most comprehensive, inclusive Human Rights Treaty covering as it does, civil, political, economic, social and cultural rights.

The referendum outcome in favour of the UK exiting the European Union (EU) has potentially profound ramifications for the realisation of children's rights in Northern Ireland.

NI has been without a government following the collapse of the Executive in January 2017 and the Assembly in March 2017 which has meant that unlike the governments in England, Scotland and Wales, NI has had no formal role or position in the negotiation processes. A letter issued by the then First and Deputy First Ministers in August 2016 is the only formal NI government position on Brexit. The letter outlines the NI Executive's concerns:

1. The importance of the land border to the continuing peace process and the free-flow of people, goods and services.
2. There must be no impact or detriment to the NI economy particularly the agri-food sector
3. The importance of the energy market given its "small and isolated" status
4. The importance of EU funds to the NI social and economic environments¹

Currently negotiations between the UK Government and the EU are ongoing and despite

¹ <https://www.executiveoffice-ni.gov.uk/publications/letter-prime-minister-rt-hon-theresa-may-mp>

the issuing of the December agreements, the UK White Paper and the EU 'Preparedness 2' Paper on a 'No Deal', there continue to be a range of unknowns with regards to the final settlement which must be agreed by 29th March 2019, just 8 months away.

In the months following the referendum, debates centred around the economy, industry and the impact on goods and services with little discussion about the effect³ on human rights generally or the impact on children and young people specifically.

Despite the Prime Minister's call in the UK Government's February paper⁴ to make a success of the vote, stating...

'let us do it not for ourselves, but for those who follow. For the country's children and grandchildren too. So that when future generations look back at this time, they will judge us not only by the decision that we made, but by what we made of that decision',

In a House of Lords debate in March, Baroness Massey of Darwen asked whether children had been consulted, '.... Has an impact assessment on how Brexit will affect children been considered? If not, why not?'⁵

NICCY's work in relation to the UK exiting the EU ('Brexit')

NICCY has been engaging with NI Executive Officials who have responsibility for implementing Brexit. We held 3 roundtables with Officials representing most government departments and bilateral meetings with lead Officials in The Executive Office.

NICCY, along with our counterparts in the Republic of Ireland, the Ombudsman for Children's Office (OCO), brought together a group of young people from both sides of the border to support the 'voice of young people' in the Brexit process. At the "It's Our Brexit Too" Conference, in November 2017, 120 young people from across the island of Ireland, reiterated their sense of 'exclusion' and 'disenfranchisement' from an outcome in which they had no vote or 'say' but which will impact their futures for years to come.

The "It's Our Brexit Too: Children's Rights, Children's Voices" report was published ⁶

2. www.bbc.co.uk/news/world-europe-44881335

3. www.bbc.co.uk/news/education-44561319 Brexit youth: 'I am angry and the future scares me.'

4. The United Kingdom's exit from and new partnership with the European Union. February 2017

5. [https://hansard.parliament.uk/lords/2018-03-05/debates/AE7EB742-4BCD-4D00-B43D-AD7ED9A21911/European Union\(Withdrawal\)Bill](https://hansard.parliament.uk/lords/2018-03-05/debates/AE7EB742-4BCD-4D00-B43D-AD7ED9A21911/European%20Union%20Withdrawal%20Bill)

6. www.niccy.org/Brexit

(www.niccy.org/Brexit) and we facilitated a visit with a delegation of members of the young people's steering group to Westminster and one with OCO to Brussels, to speak with key stakeholders and decision makers, including Members of the Brexit Committee, House of Lords, the European Parliament and Taskforce 50. Dissemination of the key calls from young people is ongoing as is our engagement at a strategic level with all NI Government Departments, EU Commissions and with relevant political parties and stakeholders here, in the UK and EU. The young people's recommendations are included in the Appendix 1.

“While the impact will differ according to jurisdiction it is in relation to NI that the potential for the most adverse impact on children is greatest.”⁷

NB: Articles quoted in this report relate to the UNCRC unless otherwise stated.

⁷ www.childrenssociety.org.uk/what-we-do/resources-and-publications/making-brexit-work-for-children

Respecting Children's Rights

The Draft Agreement issued by the EU Commission Taskforce⁸ set out agreed areas and those outstanding areas subject to current negotiations on which Michel Barnier (EU Chief Negotiator) had stated he hoped for 'substantial progress in time for (the) June European Council... (to) continue the scoping of the framework for the future EU-UK relationship in parallel with wrapping up the final details of the withdrawal agreement.'⁹ The UK Government's White Paper¹⁰ just published earlier this month does not adequately address rights and equality safeguards.

Children and Young People will undoubtedly be impacted in a number of ways by the outcome of current negotiations as well as additional decisions and subsequent arrangements. The EU Withdrawal Bill removes the EU Charter of Fundamental Rights from UK law and the ability to challenge EU legislation on human rights (and other) grounds.

A legal review of the impact of Brexit on the rights of children states "the loss of the Charter and its specific recognition of the rights of children may have significant repercussions"¹¹

The Charter places a constitutional obligation on EU 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. The Government has stated that the removal of the EU Charter from UK statute "will not affect the substantive rights from which individuals already benefit in the UK."¹² The White Paper notes that many of the rights protected in the EU Charter can be found in other international instruments including the UN Convention on the Rights of the Child (UNCRC). However until such time as the UK government or the NI Assembly incorporate the UNCRC into domestic legislation, the EU Charter remains the one place where there is focused and specific recognition of children's rights.

8 Draft Withdrawal Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community. TF50 (2018) 33 – Commission to EU 27. 28 February 2018

9 Michel Barnier article (on his visit to Northern Ireland), Belfast Telegraph 1 May 2018

10 The future relationship between the United Kingdom and the European Union. UK Government Paper. July 2018

11 www.childrenslawcentre.org.uk/brexit

12 Legislating for the United Kingdom's withdrawal from the European Union, www.gov.uk/government/uploads/system/uploads/attachment_data/file/604516/Great_repeal_bill_white_paper_accessible.pdf

Specifically Article 24 of the Charter states that¹³:

Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

The UK leaving the EU therefore has implications for children and young people in relation to potential loss or regression of wide ranging rights protections built up over 45 years of EU membership.

Following a meeting with our Young People's delegation, Baroness Lister¹⁴ in a recent House of Lords debate, voiced her 'strong opposition to the removal of the Charter of Fundamental Rights from retained EU law ... colleagues (had) made clear the damaging impact this is likely to have on children.' Her amendment (70) went further than others in that it provided for 'the full incorporation of ... the UN Convention on the Rights of the Child ratified by the UK'.

Many of the rights protections of the UNCRC are 'engaged' in relation to the various aspects of Brexit; as previously called for, NICCY would very much welcome full incorporation of the UNCRC in line with the Committee's Concluding Observations.

There are also

"....additional reasons why this is of particular concern for Northern Ireland.
Human rights and equality are intended to be central to the peace process.
Although the Human Rights Act 1998 appears safe for now the volatility of UK

¹³ www.europarl.europa.eu/charter/pdf/text_en.pdf

¹⁴ [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)

politics means that it is not secure while the promise to ‘repeal and replace’ remains intact¹⁵.”

In order to protect children and young people’s rights there must be full incorporation into domestic legislation of the UN Convention on the Rights of the Child.

¹⁵ www.libertyhumanrights.org.uk/sites/default/files/Bringing%20human%20rights%20home%20-%20Jan%202018.pdf Bringing Human Right Home? Implications for Human Rights and Equality in Northern Ireland. Colin Harvey Liberty January 2018

The Good Friday Agreement

'The United Kingdom shall ensure that no diminution of rights, safeguards and equality of opportunity as set out in that part of the 1998 (Belfast/Good Friday) Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union..'¹⁶

The Belfast/Good Friday Agreement (GFA) - an international treaty between the Governments of the UK and the Republic of Ireland - effectively brought an end to Northern Ireland's violent conflict. Indeed today's generation of children are the first in NI to live in relative peace.

The GFA established a number of co-operation mechanisms, one of which was the Joint Committee on Human Rights¹⁷ set up to consider human rights issues on the island of Ireland. In a recent policy statement to the UK and Irish Governments the Committee outlined 6 requirements for the final EU Withdrawal Agreement to meet the obligations of the GFA as follows:

1. Ensure no diminution of rights within the withdrawal agreement;
2. Safeguard the North-South equivalency of rights on an ongoing basis;
3. Guarantee equality of citizenship within Northern Ireland;
4. Protect border communities and migrant workers;
5. Ensure evolving justice arrangements do not water down rights; and
6. Ensure continued right to participate in public life for EU citizens in NI.

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, and made recommendations including:

- The Withdrawal Agreement to provide for the continuing North-South equivalence of rights, post-Brexit, as established under the 1998 Agreement;
- The EU seek a legal commitment to retaining the Charter of Fundamental Rights and that rights can be enforced by the Court of Justice of the EU in NI; and
- All the people of NI retain the right to stand and vote in European Parliament elections.

¹⁶ Article 1 'Rights of Individuals' in The Protocol on Ireland/Northern Ireland to the Draft Agreement on the withdrawal of the UK from the EU. TF50 (2018) – Commission to EU27. 19 March 2018

¹⁷ Press release by IHREC from the Joint Committee on Human Rights 14 March 2018.

The GFA recognises the:

‘birth right of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Governments and would not be affected by any future change in the status of Northern Ireland¹⁸.’

This required changes in legislation and structures across Ireland, greatly facilitated by the fact that both States were members of the EU and therefore there were no differences in rights pertaining to claiming either citizenship. Thus the UK leaving the EU has implications for the integrity of the Good Friday Agreement, as those in Northern Ireland holding an Irish will retain EU citizenship unlike those identifying solely as British and therefore holding a British passport

The UK ‘Northern Ireland and Ireland position paper’ August 2017, 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.
¹⁹

There remains concern that Brexit will undermine the ‘equivalence of rights’ due to ‘differentials’ in EU rights and UK rights, between those who identify as British and Irish 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 ... both, (and) to equal treatment irrespective of their choice’.

The position was reiterated in paragraph 52 of the EU-UK Joint Report (December 2017):

“The people of Northern Ireland who are Irish citizens will continue to enjoy rights as EU citizens, including where they reside in Northern Ireland. Both parties therefore agree that the Withdrawal Agreement should respect and be without prejudice to the rights, opportunities and identity that come with European Union citizenship for such people and, in the next phase of negotiations, will examine arrangements required to give effect to the ongoing exercise of, and access to, their rights, opportunities and benefits.”

¹⁸ The Agreement 10 April 1998 S6.1 (vi).

¹⁹ HM Government ‘Northern Ireland-Ireland Position Paper’ 16 August 2017

The December Agreement provides some assurances in para 53 concerning the 'Rights, Safeguards and Equality of Opportunity' however clarity is necessary as to how 'no diminution of rights, safeguards and equality of opportunity' will be assured in practice.

Pearse Smyth, member of the young people's steering group, interviewed by Belfast Live stated:

"The GFA says it doesn't matter who you are, you can consider yourself British, Irish or both and that is promised. But it is also promised that everyone will have the same rights and everyone will be treated equally,

"The thing is at the minute, if I have an Irish passport and my best friend next door has a British passport I will have more rights than him internationally.

"That was a big concern because identity and culture are a huge part of people's lives here. Being told that you don't have as many rights because you don't consider yourself Irish, that's not right, there's an issue there and I think that needs to be addressed."²⁰

There must be an undertaking that there are no differences in the rights of people who identify as Irish or British in Northern Ireland as outlined in the Good Friday Agreement.

²⁰ www.belfastlive.co.uk/news/belfast-news/meet-west-belfast-teenager-aiming-14499166

Impact of the Border

Article 8 of the European Convention on Human Rights

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Lord Browne of Ladyton, reiterated that ‘Brexit has consequences... to the hopes and aspirations of future generations..... particularly important on the island of Ireland and in the border communities, who suffered so much during the troubles.’

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 opening the border region, removing the military infrastructure and ensuring the freedom of movement of people, goods, services and capital. The border has become ‘seamless’, allowing routine movement on either side.

In December 2017 the EU and UK agreed the border would be kept frictionless. The achievement of this will be dependent on the final deal however, should this not be possible a “backstop” was agreed which would ensure that NI maintained full alignment with the rules of the EU single market and customs union, therefore maintaining the current arrangements with regards to North and South co-operation. Whilst the White Paper²¹ is in part, an attempt to prove a backstop unnecessary, further work is required, according to the new Brexit Secretary Dominic Raab ‘to deliver on both sides’ commitments to Northern Ireland and Ireland, avoiding a hard border without compromising the EU’s autonomy or UK sovereignty.’

²¹ The future relationship between the United Kingdom and the European Union. UK Government Paper. July 2018

NICCY does not underestimate the challenges of ensuring that the exit agreement protects the GFA and recognises the preservation of the Good Friday Agreement is essential to continued peace.

There are concerns that any border checks infrastructure however minimal, will be subject to 'mission creep'. Previous militarised infrastructure was not what was originally intended but arose from the need to protect customs staff working. A return of intrusive infrastructure would be extremely regressive and impact on the day-to-day life of children living in the border region. Concerns have been raised with NICCY by children if 'going to school or a local shop requires crossing an international border', they may need to start constantly carrying identification documents. Retention of the common travel area (CTA) has gone some way to allaying such fears. However, the CTA applies only to UK and Irish citizens, and media coverage in recent times of UK Border Force recruiting staff from those who only hold British passports²² – albeit quickly rescinded – does not instil confidence.

Children and young people (and their families) currently travel across the border for a wide range of reasons, some doing this on a daily basis, and others less frequently. They cross the border 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. A 'hard border' would limit children's freedom of movement and access to vital services, family life, as well as damaging local border economies.

Concerns have also been raised that the border could potentially become a target for paramilitary style organisations and we would see a militarised situation return with the concomitant disruption to lives - particularly of children and young people and the wider population, in border regions.

There must be no border arrangements across Ireland or between GB and NI which compromise the Good Friday Agreement.

²² www.bbc.co.uk/news/uk-northern-ireland 'Home Office Sorry for Border Force British Passport 'error''
21 April 2018

Non-Discrimination

Article 2

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Article 14

States Parties shall respect the right of the child to freedom of thought, conscience and religion.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Tensions around 'Brexit' have already served to emphasise differences and divide communities across the UK²³, but particularly in Northern Ireland where tensions have been exacerbated between British and Irish identities, working against the Good Friday Agreement's recognition of the right of individuals in Northern Ireland to identify as British, Irish or both. While young people identifying as Irish will remain EU citizens after the UK leaves the EU, this will not be the case for young people identifying as British.

The children and young people with whom NICCY have engaged since 2016 have consistently raised this issue as one of their main concerns and this was reiterated at the conference in November 2017. They wanted Ireland, North and South to be considered a safe and welcoming place for all newcomer children particularly those who are refugees or asylum seekers.

There has also been some evidence of increased racism and hostility towards ethnic minorities and migrants in Northern Ireland (and across the UK) at the time of the referendum which appears to have increased subsequently. Many EU/EEA nationals report facing anxiety and uncertainty as they consider the potential impact of Brexit on their

²³ Eastern European Young People in Brexit Britain: Racism, anxiety and a precarious future. D. Sime, E. Kakela, S. Corson, N. Tyrrell, C. McMellon, C. Kelly and M. Moskal. Research and Policy Briefing No. 1 November 2017.

future status,²⁴ and this is compounded by increasing prejudice against migrant, asylum seeking and refugee children and young people.

NICCY has been informed that some newcomer children are disengaging from education and other services as they believe that they will be deported following Brexit.

Assurances must be given and proactive measures taken to protect all children from discrimination.

²⁴ Institute for Conflict Research. 'Brexit and eYou': information for EU/EEA nationals

Economic Wellbeing

Article 27

States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Article 26

States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

Children have consistently been the age group at most risk of being in poverty in NI with nearly 118,000 children currently living relative poverty (after housing costs) ²⁵. The Social Security changes across the UK are likely to exacerbate this situation and the Institute for Fiscal studies predicting an increase of 7% for children living in poverty between 2015 and 2022.²⁶

The Northern Ireland Composite Economic Index (NICEI) released for the first quarter of 2018 demonstrate that NI's economy has stagnated over the last 2 years, leading CBI NI Director, Angela McGowan to state;

"Clearly the current political vacuum and Brexit uncertainty are taking their toll on economic performance. The CBI and other business leaders have repeatedly called on political leaders to get back into government so that critical decisions can be made, on issues such as economic strategy, infrastructure and public service transformation²⁷.

Additionally, various studies have indicated that the economy in Northern Ireland will potentially be more significantly affected if the UK leaves the Customs Union and Single Market

Over preceding decades the fact that the UK and Ireland have both been members of the EU has enabled the integration of systems and resources across and between these islands, to ensure the success of a number of key industries including agriculture. Leaving

²⁵ DfC, May 2018, Poverty Bulletin, 2016/17

²⁶ Hood, H., Waters, T., (2017) Living standards, poverty and inequality in the UK: 2017–18 to 2021–22, (London: IFS).

²⁷ www.belfasttelegraph.co.uk/business/northern-ireland/northern-ireland-economy-on-brink-of-recession-territory-37134495.html

the Customs Union and Single Market will have a particularly significant impact therefore on producers²⁸ across the island of Ireland. This impact on the economy will exacerbate the material well-being of increased numbers of children and young people.

Northern Ireland currently benefits from a number of EU funding streams, including the EU Social Fund, PEACE funding and INTERREG funds. Moreover, given the importance of agriculture to the Northern Ireland economy, the loss of Common Agricultural Policy is also likely to have a more significant impact on Northern Ireland's economy. These funds (2014-2020) represent a total of €3.5bn of an investment into NI²⁹. The eventual loss of these would inevitably adversely impact on children and families across NI. It is crucial that the UK government introduces robust arrangement to continue the investment required.

Farming communities, rural and border communities and those who previously benefitted from EU funding, particularly in areas of high socio economic disadvantage, are likely to be disproportionately affected and may experience increased levels of child poverty.

A transition period up to 31 December 2020 has been agreed to facilitate development of vital arrangements and preparations by businesses and others.

There must be a formal commitment for continued financial and other support for socially disadvantaged communities and those that currently rely on EU funding.

²⁸ The Impartial Reporter 5 May2018 www.impartialreporter.com/.../16205479.Farmer_John_Sheridan

²⁹ www.eurolink-eu.net/eu-funding-2/

Safety and Stability

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements

Article 19

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Article 32

States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

There are approximately 80 EU instruments which entitle children to protection and welfare, these include trafficking, abduction, exploitation and product safety. NI's land border inevitably exposes vulnerabilities to child abductions, child sexual exploitation, children going missing, and/or being trafficked to and through NI.

Currently there is a high degree of co-operation across the EU in relation to tackling crime through ECRIS (European criminal records information sharing), Europol, Schengen Information System (a database of real-time crime alerts), Eurojust and the use of the European Arrest Warrant. Data sharing protocols are also important in pre-employment checks for those working with children and young people.

The PSNI and An Garda Síochána collaborate and share intelligence across the island of Ireland. This is particularly important in safeguarding and protecting children and young people and it is vital that such mechanisms are available to do so and the current arrangements must be protected.

The UK Government also announced last September it and the EU 'must agree an "ambitious" new security treaty to combat terrorism and organised crime or the continent will face "increased risks" post-Brexit³⁰.' we all must await the outcomes of current negotiations.

This has been reiterated by Dominic Raab MP Secretary for Exiting the EU, who states in the 'future relationships' White Paper that:

'Alongside this unprecedented economic partnership, we also want to build an unrivalled security partnership'³¹

However the PSNI Chief Constable when appearing before the NI Affairs Committee in July 2018, stated he feels 'isolated' and 'in the dark' in preparing for Brexit, given the lack of a NI Executive and further stating he is '400 officers short of what is needed to deal with current demands'. George Hamilton also highlighted that other agencies such as HMRC and Border Force have 'seen workforce increases in the thousands.'³²

The security treaty must maintain current levels of protections and must be adequately resourced.

³⁰ www.ft.com/content/112c25f2-9c75-11e7-9a86-4d5a475ba4c5 Helen Warrell Financial Times Sept' 2017

³¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725288/The_future_relationship_between_the_United_Kingdom_and_the_European_Union.pdf

³² www.belfasttelegraph.co.uk/newsbrexit/psni-in-the-dark-overbrexit-because-of-stormont-stalemate-mps-told-37057369.html

Family Life

Children and Young People have raised the issues of family separation, divorce, custody and contact arrangements. These could be adversely impacted due to the border and legal arrangements post Brexit.

The areas where EU instruments and enforcement mechanisms are currently engaged include 'jurisdiction' to hear disputes, recognition and enforcement in relation to orders made examples include maintenance payments and co-operation and to share information and return abducted children.

'The importance of a harmonised family law system across the EU comes sharply into focus when it is considered that there are approximately one million British citizens living in other EU member states and some three million EU citizens living in the UK. The scope for personal and family relationship issues arising is significant and so certainty and co-operation are key.³³

Further clarity is required with regard to how the UK Government intends to address these issues.

³³ Family Law Bar Association FLBA, International Academy of Family Lawyers (IAFL) and Resolution. 'Brexit and Family Law. October 2017.

Healthcare

Article 24

States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

Article 23

States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community

Children's access to both primary and acute healthcare may be significantly impacted by Brexit in a number of ways. For many living in border areas, they are currently able to access healthcare services that are closest to them, irrespective of which side of the border they live. An example of this is young people in Donegal being able to go to hospital in Derry for treatment, rather than travelling much longer distances to access a hospital in the Republic of Ireland. There is therefore potential for people on both sides of the border to be required to travel longer distances to receive basic healthcare.

In addition, some specialised health services for children and young people are organised on an Ireland-wide basis, to provide the scale required to ensure a quality service. This includes the All-Island Congenital Heart Disease Network. If services such as these do not continue to be organised on an island-wide basis, it is likely that children from Northern Ireland will have to travel to Great Britain for operations and treatment. Assurances have been given to NICCY by the Department of Health that these bilateral agreements will be protected but there remains some uncertainty with regards to the final exit agreement and allowing scope for such. This is one of 4 areas being addressed by the Department of Health working group, which are:

1. Cross-border healthcare and access to healthcare in EU states post-Brexit
2. HSC workforce – i.e. mobility, recruitment, retention and professional regulation
3. Funding issues – i.e. replacement for EU structural funds and access to European competitive funds

4. Financial risks re: non-pay expenditure³⁴

Our engagement with children and young people highlighted some issues including loss of EU funding for specialised wheelchairs and whether compliance with disability access, particularly when travelling, would be affected.

Other issues raised with NICCY include whether the UK will retain the European Health Insurance Card arrangements; how emergency services might be affected when having to cross the border to reach patients or to bring them to their closest hospital; the immigration status of healthcare workers (the CTA does not include EEA healthcare workers) and the equivalence of healthcare standards across the island of Ireland post-Brexit. According to the British Medical Association, 45% of EEA doctors say they are considering leaving the UK; 18% have already made plans to do so. The BMA have issued 'Healthcare first – a Brexit blueprint for Europe' which includes 5 manifesto calls relating to:

- Workforce;
- Patient care and public's health;
- Northern Ireland;
- Regulation and assurance;
- Research and innovation.

Its Chair, Dr Chaand Nagpaul has stated that:

'The ongoing uncertainty and insecurity arising from Brexit is having a destabilising effect not just on the medical workforce, but on the wider health system, access to established networks, the sharing of best practice and collaborative working.

Health services must be a priority during the Brexit negotiations... the challenges posed to our health service ... are considerable...'³⁵

Children's current access to primary and acute healthcare must be protected and there must be scope for further co-operation where deemed in the best interests of children and young people.

³⁴ www.nicva.org/article/departement-of-health-brexit-update-july-2018

³⁵ 'Healthcare first – a Brexit blueprint for Europe'. BMA April 2018.

Learning and Achieving

Article 28

States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

The Department for Education has calculated that around 500 children and young people travel across the border to go to school in each jurisdiction every day and that they are accompanied by 300 teachers.³⁶

Research by the Ulster University estimated that an additional 1500 young people crossed each day to access further and higher education across the border. There are concerns that the UK exiting the EU might affect these arrangements in relation to cross border travel, and if fees were to be introduced in respect of accessing 'cross border education'.

If the current arrangements do not continue, this could result in children having to change schools which would limit their choice of schools in the border area and future intended careers. Moreover, a hard border would have a significant impact on the daily lives of children and young people in border areas in accessing extra-curricular activities outside school hours.

³⁶ Information provided at NICCY meeting by Department of Education Representative on 12 April 2018.

Many young people, in spite of assurances to the contrary, continue to express concern about whether UK students could access the Erasmus+ programme after leaving the EU, and more generally how their future opportunities would be affected by restrictions on their freedom of movement and freedom to live, study and work on either side of the border and across Europe.

Other issues include the equivalence of qualifications, access to placements either side of the border, and the potential loss of EU funding to informal education and research programmes.

Children's rights to education, play and leisure must be protected.

Conclusion and Calls to Government/s

At time of writing³⁷, the UK Government is into its summer recess following a period of disagreements, resignations and increasing concern over the prospect of a ‘no deal’ scenario. The EU Commission has released its ‘Preparedness Paper’ on which it has been working for some months. The days, weeks and months ahead and the various stages yet to be gone through will reveal whether an agreement is possible and if so, the content of that. Bearing this in mind it is imperative that a focus is held on safeguarding rights – this is fundamental to all aspects of the lives and outcomes for our children and young people (and indeed wider society).

There is considerable uncertainty with regard to the likely nature of the final “deal” and indeed different interpretations as to the impact of public statements and positions taken by both the UK government and the EU.

In June 2018, NICCY published its Statement on Children’s Rights in NI which made 5 calls to government concerning Brexit. This statement repeats those calls and has added a 6th.

Therefore, in conclusion, the NI Commissioner for Children and Young People calls on Government and all involved in negotiations, to 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 on or around the UK-EU border on the island of Ireland;
3. Safeguarding our children and young people must be ensured through maintaining

³⁷ 19 July 2018.

current security, policing and justice mechanisms e.g. Europol, Eurojust, ECRIS, European Arrest Warrant and Data protocols;

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, alleviate child poverty and promote adequate standards of living - with a particular focus on disadvantaged groups and communities; and
6. It is imperative that the UK government communicate directly with the public their negotiating position and the final “deal” and its likely implications. Such communication must include child-accessible versions.

Further recommended reading:

- Making Brexit Work for Children (<https://www.childrenssociety.org.uk/what-we-do/resources-and-publications/making-brexit-work-for-children>)
- Selected Legal Aspects of the impact of Brexit on the rights of children across the island of Ireland, A&L Goodbody on behalf of Children’s Rights Alliance and Children’s Law Centre- pdf
- It’s Our Brexit Too: Children’s Rights, Children’s Voices - <https://www.niccy.org/about-us/our-current-work/brexit/brexit-reports/>

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Appendix 1

Key messages and recommendations from “It’s Our Brexit Too: Children’s Rights, Children’s Voices”.

1. Brexit will have particular, profound implications for people in Ireland, North and South, and these should be given special consideration during the negotiation process
2. Brexit will impact on children and young people more than any other group, as we will have to live with the implications for longest. So talk to us about it and listen to our views.
3. We have come too far from the violence and divisions of the past. We don’t want to see regression to a hard border and conflict.
4. Protect all aspects of the Good Friday Agreement throughout the Brexit process and protect the right of young people in Northern Ireland to consider ourselves British, Irish or both.
5. Promote diversity and prevent deepening divisions, particularly in relation to hostility towards migrants.
6. Ensure that the EU/UK border on the island of Ireland is a soft border. Protect our freedom of movement across the border.
7. We are very concerned that Brexit could limit our opportunities in the future for work, travel and study. Protect these opportunities and support us to avail of potential new opportunities through Brexit.
8. Maintain equivalence of standards and cooperative agreements across the island of Ireland in relation to key areas such as health care, education, policing, safety and child protection.
9. Allow children, young people and their families to continue to access services and facilities on either side of border, for example in relation to health, education, sports and cultural activities. The UK government should also commit to continuing membership of the EEA to ensure retention of the EHIC card.

The money that the UK government previously paid to the EU should be used to fund improved health services and compensate for the loss of EU funding previously provided to Northern Ireland