

This briefing gives a broad overview of the ways that EU law can affect children. The report is presented in 2 sections. Section one focuses on (i) child protection and safety; (ii) children's health and well-being; (iii) child immigration; and (iv) family laws. Section two highlights the immediate issues for children and young people currently supported as children in care and care leavers and EU national with safeguarding concerns.

1. Section 1 – Wider context

It is important to recognise the range of EU law and the impact on children and young people. The majority of EU law, once implemented in the UK, affected all UK residents, whether they are adults or children. This may make it difficult to pinpoint clearly which EU legislative acts establish “child specific” issues.

a) Child Protection and Safety

EU law provides a host of legislation which protects children from abuse and neglect and helps to ensure their safety. There are specific EU Directives which have been implemented by the UK, aimed at combating harm to children and which create legally enforceable entitlements for children. These include the EU Directive on combating the sexual abuse and sexual exploitation of children and child pornography, (transposed in part by The Special Measures for Child Witnesses (Sexual Offences) Regulations 2013³¹ and The Working with Children (Exchange of Criminal Convictions) (England and Wales and Northern Ireland) Regulations 2013), which acts to protect children against the serious violations to their fundamental rights that these crimes can have, as well as addressing wider issues such as immigration, asylum and free movement.

There are a range of legislative protections which indirectly protect children and keep them safe. The European Toy Safety Directive as implemented by The Toys (Safety) Regulations 2011³⁵ include protections pertaining to toy safety. The safe research and roll-out of medicines to be used in a paediatric context across the EEA have been ensured by the EU Regulation on medicinal products

While, harmful media in the form of any programmes which may “seriously impair the physical, mental or moral development of minors” were addressed through the Audio- Visual Media Services Directive (as amended). This Directive (and its successors) have been implemented through a range of primary & secondary legislation, and through Government policies and regulatory codes.

This broad-based approach to implementation - and how embedded they are in the domestic regulatory framework - suggests that the core protections for children will persist beyond the UK's withdrawal from the UK.

Furthermore, the EU legislates on wider issues which inevitably influence the protection of children, such as human trafficking. The Human Trafficking Directive encourages global action against trafficking of human beings, reducing vulnerability, supporting and assisting victims and fighting the root causes of human trafficking, part of the response of which has been to introduce UK based legislation such as the Modern Slavery Act 2015.

Various policies and extra-legislative organisations are also involved in the protection of children. The European Strategy for Better Internet aims to give children the 'skills and tools for using the internet safely and responsibly'. The European Commission Recommendation and Preventative Strategy titled 'Investing in Children: Breaking the Cycle of Disadvantage' represents a comprehensive attempt to tackle child poverty and promote well-being by 2020.

European co-operation has also resulted in EU wide watchdogs and assistance services, such as the Missing Children Hotline which allows parents and children alike, whether at home or in another European country, to get free emotional, psychological, social, legal and administrative support.

Perhaps the most effective way in which the EU protects children is through cross-border co-operation by law enforcement agencies. EUROJUST, is an EU agency that facilitates judicial co-operation in criminal matters, including child trafficking. EUROPOL is the EU law enforcement agency that includes the European Cybercrime Centre, an organisation which directly tackles internet child pornography as a priority.

An EU criminal record system ensures that those with convictions for offences against children in one Member State will be prevented from working with children in other EU countries. Meanwhile, the European Arrest Warrant requires another Member State to arrest and transfer a criminal suspect or sentenced person to the issuing State so that the person can be put on trial or complete a detention period, holding criminals, including those who have commissioned crimes against children across the EU, to account.

The EU not only creates the legislative framework and policies which act as a protection for children, but the CJEU is able to provide decisive rulings and sanctions through its supra national status. For example, it hands down decisions on the interpretation of EU law which national governments must follow or face sanctions, providing protection for citizens whose governments may be acting politically and therefore not in their best interests by elucidating the correct application of EU law.

b) Children's Health and Wellbeing

A number of EU legislative provisions have been passed to protect the health and wellbeing of EU national children. For example, the Audio-visual Media Services Directive noted above forbids direct targeting of minors in commercials for alcoholic beverages. The EU Council Recommendation on the prevention of smoking recommends that EU Member States "adopt appropriate legislative and/or administrative measures to prevent tobacco sales to children and adolescents".

A number of policies and initiatives have also been enacted at EU level protecting the health of children. The EU Action Plan on Childhood Obesity 2014-2020 is an action plan developing policy on tackling childhood obesity, with EU Health Ministers declaring their commitment after a broad consensus that obesity in children and young people should be prioritised in health agendas triggered the health drive in the UK.

The EU has also contributed monetary assistance to Member States where children are most at risk, for example in the most deprived areas. The 'Fund for European Aid to the Most Deprived', has assisted in providing breakfast clubs and programmes in order to tackle poverty and child nutrition. Assistance from the fund to the UK for the purpose of the provision of breakfast clubs between 2014- 2020 was pledged as €3.9 million.

c) Child Immigration

In addition to the protections afforded by EU legislative acts, children in the UK also benefit from the protections concomitant with being resident in an EEA country. Thus, not only are children who are EEA nationals offered extensive free movement rights with a mutual right between Member States to live and work in other EEA member countries, but those outside EEA countries

who are forced migrants, whether that be by reason of trafficking or from seeking asylum, are also afforded extensive rights through the EU's wide recognition of human rights. Consequently, children from EEA countries moving to the UK under these provisions are able to exercise the same work rights as UK nationals, without discrimination on the grounds of their nationality, and thus may, upon reaching school leaving age, enter employment on the same terms as their UK national counterparts (however, it is worth noting that if they have moved to the UK with their parents there is no obligation for them to work until the age of 21, as they qualify as dependents upon their parents until that point, so long as they are not proving to be a burden on the social security system).

As a result of the EU's commitment to universal human rights, forced migrants who do not hold EU citizenship, such as asylum seekers, refugees or trafficked persons, are afforded stronger protections. For example, the Human Trafficking Directive, which was implemented in part in the UK via the Modern Slavery Act 2015 seeks stronger sanctions where an offence has been committed against a particularly 'vulnerable victim', which, the legislation notes, includes 'at least children'. While the EU does not determine the content of national immigration laws entirely, it does impose standards relating to entry, residence and the treatment of forced migrants, offering special protection to children, particularly unaccompanied children. These include the right to legal representation, appropriate care and accommodation, and access to education and health services.

d) Family Law

EU law directly influences jurisdictional issues in family law disputes (where there is a cross-border element to the separation, and subsequent conflicts of law), and hence the way children are affected by this. As a result, any changes are likely to be felt most by families who have an international element, whether that be because the parents have different nationalities or for example, two parents live in separate jurisdictions following separation. Currently, the jurisdiction in which such cases are settled in the event of a conflict of law between the two differing countries (and subsequent recognition and enforcement of judgments made under this Regulation) is dealt with by EC Regulation 2201/2003 ("Brussels II bis") which has simplified jurisdictional issues on divorces, made exercising access rights far simpler and protected children against abduction within the EU.

While the impact of EU law on UK family law has been limited to jurisdictional and conflict of law disputes, there are also international treaties separate to EU Law, to which all EU Member States are party, such as the 1980 Luxembourg Convention, and the 1996 Hague Convention, dealing with broader matters such as representation and the protection of children's property. This was then supplemented by EU Legislation, namely Brussels II bis, which concerns jurisdictional matters for parental responsibility, including child access for the other parent, as well as specifying procedures regarding international child abduction. The UK based Family Law Act 1986 has been interpreted and amended on the basis of this. Should Brussels II bis no longer apply in the future, the Hague and Luxembourg Conventions would continue to be applicable.

EU regulations also ensure equal treatment of court orders across Member States and enable family law proceedings to be carried out more effectively, thus protecting children, especially those of a migrant background, from being adversely affected by familial break ups. Namely, Regulation 805/2004 creates a European Enforcement Order for uncontested claims, implemented in the UK through amendments to the Civil Procedure Rules and the addition of a new Section V to Part 74 (and associated addition to Practice Direction 74).

All EU citizens (and their families) in the UK, regardless of when they arrived, will, on the UK's exit, need to obtain an immigration status in UK law. They will need to apply to the Home Office for

permission to stay, which will be evidenced through a residence document. This will be a legal requirement but there is also an important practical reason for this. The residence document will enable EU citizens (and their families) living in the UK to demonstrate to third parties (such as employers or providers of public services) that they have permission to continue to live and work legally in the UK. Following the UK's exit from the EU, the Government may wish to introduce controls which limit the ability of EU citizens (and their families) who arrive in the UK after exit to live and work here. As such, without a residence document, current residents may find it difficult to access the labour market and services. For parents with children who qualify as children in need – S.17 of the 1989 Children's Act applies and this may increase resourcing demands on LA. To date there is no clear indication of the likely impact.

For those EU citizens who became settled in the UK before a specified date, which the Government proposes will be no later than the date of the UK's withdrawal from the EU- they will be provided a new settled status in UK law. Obtaining this settled status will mean that this cohort of EU citizens whose residence started before the specified date will have no immigration conditions placed on their residence in the UK, provided that they remain resident here. They will be able to work or study here freely, live permanently in the UK with a partner who has settled or is a UK national, and have access to benefits and public services in line with UK nationals.

Settled status is not the same as citizenship - for example, holders of this status do not have a UK passport - but those with settled status and at least six years' residence may apply for citizenship. Settled status would generally be lost if a person was absent from the UK for more than two years, unless they have strong ties here. Obtaining settled status will be subject to meeting certain requirements. The eligibility criteria will be set out in UK law, but the essential conditions will be:

- a requirement for the applicant to have been resident in the UK for a set length of time – likely to be 5 years.
- an assessment of conduct and criminality, including not being considered a threat to the UK.

Section 2

Children in Care

Haringey was included in the EU settlement pilot scheme, under the public test phase, commencing from 21 January 2019. Applications for settled status required evidence of residency of an EU state and citizenship (but not a British citizen) with a valid EU passport and/or a biometric residence card. These conditions worked well under the pilot scheme for EU Nationals employed in the UK but presented some challenges for UASC. This was recognised by the Home Office and guidance was provided to ensure that LA's identified which children needed to apply, and that focused work commence to offer support to children and young people secure relevant documentation.

The benefit of being part of the pilot ensured that the service knowledge and early planning has effectively identified the children and young people who are most likely to require enhanced support to achieve settled status and 27 Children in Care to Haringey have been identified as EU Nationals without the required documentation.

A review of the data, establishes:

Country of Origin	Age ranges from 0- 24
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Bulgarian	3
French	1
Irish	1
Italian	1
Latvian	1
Polish	13
Romanian	3
Slovakian	1
Spanish	1
Greek	2

Of the 27, only 1 young person to date has acquired settled status largely because of the services ability to access the young person's documents. There are a further 11 care leavers who have applications lodged with the Home Office, however the Home Office report challenges with processing the volume of submitted applications leading to delays.

The Local Authorities involved in the pilot report similar challenges to Haringey's experience:

- Difficulties securing appropriate documents.
- Need to train officers to travel to the placement location and support the carers negotiate the application process.
- The focus of the guidance over relies on process and systems rather than leniency regarding the lack of documentation.
- The lack of clarity regarding British citizenship and the cost of securing additional legal advice for children and young people who hold NRPF status and where the home office has only issued Interim leave to remain, (ILR), typically 12 months.
- Children living outside the borough need to travel to be present in person, at the Home Office for the biometrics with sometimes no certainty re the appointment times.

In addition, there are currently 9 court cases which have an EU connection. These children have families who originate from the EU who could act as possible alternative carers. We are not at the stage of proceedings where we can say for certain that all of these children will remain in the UK, potentially 3 could achieve a care plan for the child to be placed abroad after a contested court hearing. There is no published guidance from the court as yet as to the impact of a No Deal Brexit on care proceedings generally or indeed on cases currently before the court with an EU connection. Resolution and the Association of lawyers for Children published a briefing at the end of February 2019 which highlighted some possible impacts of a no deal Brexit on our work, specifically:

- Assessments in EU Member states.
- Placement of children abroad in kinship care and the recognition and enforcement of orders.

Haringey has joined the representations from other LA for the Home Office to appoint a liaison officer able to communicate with other EU states to encourage the production of suitable ID for their citizens to be able to apply for settled status. There is also a need for the Home Office to canvass the views of the Embassy's regarding whether they would accept, the UK courts Full Care Order and judgement to confirm parental responsibility. Practice experience highlights that some Embassy's have already indicated that their courts will not accept the UK Full Care Order and the impact of Brexit may need to examine the need to extend the interpretation of the law to those states.

Next Steps

1. The Commissioning service has successfully supported the Bridge Renewal Trust to secure funding from the Home Office to locally develop a response to support EU Nationals. As part of the programme it is likely that Children in care and Care leavers will be classified as a priority support group to secure settled status. The service will continue efforts to secure citizenship, as appropriate for the children and young people.
2. Co-ordinate work across the partners to focus on meeting the psychosocial needs for children and young people. The MASH data suggests that a number of newly arriving UASC prefer Haringey because of the increase in the Eritrean and Afghanistan community members.
3. Progress the representations via the courts and the Home Office for the need for Children in care and Care Leavers to be given active support and priority to be granted leave to remain.
4. Continue with the efforts through Housing to extend the work to support Care Leavers with accommodation and access to wider community support.