

European and External Relations Committee: written call for evidence— Scotland's relationship with the EU

My role as Children and Young People's Commissioner, Scotland, is to promote and safeguard children and young people's rights, keep under review law, policy and practice relating to these rights, promote best practice and undertake research. The EU has played an increasingly significant role in the area of children's rights, and I am grateful to the Committee for the opportunity to comment on the Inquiry into Scotland's relationship with the EU.

My submission focuses mainly on the benefits that EU membership has brought to children and young people and the EU's increasingly enhanced role around children's rights. I will consider the impact that exiting the EU could have on this, as well as some observations on Scotland's status in the Brexit negotiations. I appreciate that this is a complex subject, so will restrict my submission to general observations and specific points on key policy areas.

Key points

- Although 16 and 17 year olds were able to vote in the Scottish referendum and subsequent Scottish Parliament elections, they could not vote in the EU referendum and were also absent in discussions leading to the vote. Yet it is they who will be those most affected. Further discussions around Scotland's relationship with the EU should involve them.
- The outcome of the referendum vote has left many young people feeling anxious and unsettled, particularly the children of EU migrants.

- Children's rights developed in the EU in an ad-hoc fashion, but are now more co-ordinated. Inter-institutional cooperation is strong between the Council of Europe and the EU.
- There are three key milestones: the Charter of Fundamental Rights of the EU (2000); the Treaty of Lisbon (2009), the Council Guidelines for the promotion and protection of the rights of the child (2007) and the European Commission Communication on a special place for children in EU external action (2008).
- Child protection is a key area for children and their rights, but other areas are also important, such as data protection, environmental policy and consumer protection.
- A long period of uncertainty and instability is ahead which will be resource intensive.
- Scotland could play a leading role given the nature of the devolved settlement and be the 'child rights champion' of the UK.

Restricted franchise – denying 16 and 17 year olds the vote

The 23rd June referendum on EU membership resulted in a vote to leave the EU.¹ 16 and 17 year olds were excluded from this vote and were not involved during the referendum. This was unfortunate, given that Brexit will have far reaching implications for this generation. The majority of young people also voted to remain. A YouGov poll indicated that 75% of the 18-24 group voted to remain, compared with 49% of over 65s. The EU referendum has passed, but I urge the Scottish Government to now include young people in any discussions around shaping Scotland future relationship with the EU. I support the Scottish Youth Parliament's call for children and young people to be involved in the work of the advisory panel². The Committee may also benefit from seeking the views of children and young people.

¹ Electoral Commission, 'EU referendum results': <http://www.electoralcommission.org.uk/findinformation-by-subject/elections-and-referendums/past-elections-and-referendums/eu-referendum/electorate-and-count-information> [accessed 8 September 2016]. Turnout was 72.2% of eligible electors.

² Scottish Parliament Lead the Way

A campaign marked by ‘divisive, anti-immigrant and xenophobic rhetoric’

I have been particularly disturbed by press and online reports around the increased hostility towards non-UK citizens in the lead up to and following the EU referendum. The Committee on the Elimination of Racial Discrimination (CERD) echoed my views in its Concluding Observations, issued in August 2016, stating that it was

‘deeply concerned that the referendum campaign was marked by divisive, anti-immigrant and xenophobic rhetoric and that many politicians and prominent political figures not only failed to condemn it, but also created and entrenched prejudices, thereby emboldening individuals to carry out acts of intimidation and hate towards ethnic or ethno-religious minority communities and people who are visibly different’³.

The CERD Committee also expressed reservations about the Government's plan to scrap the Human Rights Act (HRA) and replace it with a British Bill of Rights. They stated that such a move *‘may lead to decreased levels of human rights protection’* in the UK, urging the Government to *‘undertake meaningful and broad public consultation’* on the plans. Along with the three other UK Children’s Commissioners, I raised similar concerns to the UN Committee on the Rights of the Child⁴.

I have also heard comments from children whose families moved to the UK— in some cases over a decade ago. Their anxieties were keenly felt and included whether they would be allowed to stay in the UK, if their parents would lose their jobs and if they could continue to study in Scotland. Some parents have reported that their children had been sleeping badly and had been bullied at school. I applaud the Scottish Government for acting so promptly to reassure families in Scotland that they are welcome and that the Government’s priority is *‘to protect Scotland’s interests, and the interests of everyone living, working and studying here’⁵.*

³ https://www.equalityhumanrights.com/sites/default/files/icerd-_concluding_observations.pdf (para 15)

⁴ <http://www.childrenscommissioner.gov.uk/sites/default/files/publications/Report%20to%20the%20UN%20CRC.pdf> (para 1.6)

⁵ First Minister addressing EU Nationals living in Scotland, 18th August 2016

Children's rights in the EU

Children's rights are now firmly on the EU agenda and part of a co-ordinated approach. Three milestones are significant:

- a. the introduction of the Charter of Fundamental Rights of the European Union (2000)
- b. the entry into force of the Treaty of Lisbon in December 2009
- c. the adoption of the European Commission Communication on a special place for children in EU external action, and the Council's EU Guidelines for the promotion and protection of the rights of the child.

The EU Charter of Fundamental Rights ('the EU Charter')

With the entry into force of the Treaty of Lisbon (December 2009), the EU Charter (formerly declaratory) gained the same legal status as the EU treaties, obliging the EU and its Member States to protect the Charter rights when implementing EU laws. Article 24 of the EU Charter is a dedicated children's rights article and asserts three key children's rights: the right for children to express (their) views freely in accordance with age and maturity, the right to have (their) best interests taken as a primary consideration in actions relating to them and the right to maintain on a regular basis a personal relationship and direct contact with both parents. It is more comprehensive than the ECHR, recognising 50 rights in six countries. It has provided an additional safeguard for rights in the UK and is a check on EU abuses. The CEJU has been willing to strike down EU decisions and review Member States actions. The UK Government had secured an opt-out⁶ from national application of the Charter, so it is reasonable to suggest that this could be the direction of travel. The Scottish Government must ensure that future negotiations reinforce these values, particularly on children's rights.

⁶ Negotiating an additional protocol to Lisbon declaring the Charter did not extend judge' 'ability to strike down laws or decisions for incompatibility with fundamental rights. The economic and social rights were not legally enforceable in relation to them.

The Lisbon Treaty (2009)

The Lisbon Treaty brought in institutional, procedural and constitutional changes to the EU and increased its scope to advance children's rights⁷. The '*protection of the rights of the child*' became an EU general objective and specific references to children were included, allowing the EU to enact measures combating sexual exploitation and human trafficking. This led to the adoption of Directives on combating child sexual abuse, child sexual exploitation and child pornography and on preventing and combating trafficking in human beings and protecting its victims (including child victims).

EU Guidelines for the promotion and protection of the rights of the child'

The third major milestone was more strategic—the EU Council's '*Guidelines for the promotion and protection of the rights of the child*'⁸ and the European Commission's Communication '*A special place for children in EU external action to mainstream children's rights into all EU activities with non EU Member States*'⁹. The European Commission adopted the 'EU Agenda for the rights of the child' in 2011 setting out priorities for children's rights law and policy across the EU Member States¹⁰, stating that '*the standards and principles of the UNCRC must continue to guide EU policies and actions that impact on the rights of the child*'. Given that all Member States are signatories to the CRC, the EU must follow it in matters within its competence. Its approach is therefore grounded in the CRC and the principles of child protection, participation and non-discrimination.

⁷ by amending the TEU and the former European Community Treaty (now the Treaty on the Functioning of the European Union (TFEU))

⁸ Council of the European Union (2007), EU Guidelines for the promotion and protection of the rights of the child, Brussels, 10 December 2007.

⁹ European Commission (2008), A special place for children in EU external action: Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, COM (2008) 55 final, Brussels, 5 February 2008.

¹⁰ European Commission (2011), An EU agenda for the rights of the child: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee & the Committee of the Regions, COM (2011) 0060 final, Brussels, 15 February 2011

EU competences

EU powers are provided in the Treaties. The EU can only legislate where it has competence and, as children's rights cut across various areas, competence is determined on a case by case basis. The EU has legislated on child protection, children's rights in asylum and migration, data and consumer protection and the environment. The Court of Justice of the European Union (CJEU) has issued numerous decisions, mainly 'procedures' where a national court/ tribunal requests an interpretation of primary EU law (the treaties) or secondary EU law (decisions/ legislation). Until recently, it had adjudicated in few children's rights cases (so there is limited jurisprudence on children's rights). This is likely to change.

The sole example where it used the CRC to determine how EU law should be interpreted is however of note: *Dynamic Medien GmbH v. Avides Media AG*¹¹ concerned the lawfulness of German labelling restrictions on imported DVDs and videos, already subject to similar controls in the UK. The CJEU concluded that the German labelling checks constituted a lawful restriction of the EU's free movement of goods provisions (which normally precluded double regulatory processes), as they aimed to protect child welfare. The CJEU cited article 17 CRC which calls on States Parties to develop appropriate guidelines for the protection of children from media information and material injurious to their wellbeing¹². The CJEU also refers to children's rights principles to inform its judgments, such as the child's best interests and the right to be heard, especially in cross-border child abduction cases¹³.

¹¹ *Dynamic Medien GmbH v. Avides Media AG*, cited in the Handbook

¹² http://www.echr.coe.int/Documents/Handbook_rights_child_ENG.PDF p 29.

¹³ CJEU, C-491/10 PPU, *Joseba Andoni Aguirre Zarraga v. Simone Pelz*, 22 December 2010.

Specific policy areas

This section focuses on areas where the EU has made inroads into children's rights and where Brexit may have a significant impact.

Child Protection

In some cases, the EU imposes binding legal obligations on Member States, particularly cross-border crimes¹⁴ such as child pornography or human trafficking¹⁵. In others, it shares competence with Member States and supports child protection infrastructure.

Binding EU Protection laws

Directive 2011/93/EU on combatting sexual abuse and sexual exploitation of children and child pornography' harmonises around twenty criminal offences against children. It obliges the UK to provide assistance and support, taking the child's best interests into account and adopting measures allowing professionals to report suspicions that a child is a victim of child sexual abuse or exploitation. It also links to Framework Decision 2009 315/JHA279 on exchanging criminal records information between Member States. This allows authorities to access the criminal records of convicted persons and collaborate across borders to combat child abuse images. It has made a major contribution to bringing EU legislation in line with the UNCRC and its General Comment 13¹⁶. It adds value because it is both comprehensive and directly enforceable. Article 5 of the Directive obliges Member States to take measures to ensure that the intentional production, acquisition, possession, distribution, dissemination, transmission, offering, supplying or making available of child pornography and knowingly obtaining access to this type of content is punishable. Brexit may mean that child victims of trafficking or pornography will have lesser protection. Slavery, servitude and forced labour are also prohibited under EU law, a

¹⁴ Article 83 of the Treaty on the Functioning of the European Union (TFEU)

¹⁵ enacted on the basis of Articles 82 and 83 of the TFEU,

¹⁶ Right of the child to freedom from all sorts of violence

http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf

live issue^{17 18} (Directive 94/33/EC). States can only exceptionally set the minimum age for employment below the minimum school leaving age¹⁹. They must also ensure that young people have appropriate working conditions and are employed for activities such as light domestic work or social and cultural activities.²⁰

Child trafficking

Article 83 of the TFEU identifies trafficking in human beings as an area where the EU Parliament and Council have legislative powers²¹ Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims is important because of the offence's cross-border dimensions. The Human Trafficking & Exploitation (Scotland) Act 2015 reflects its broad provisions.

Child protection infrastructure

Stafford²² reminds us that EU intervention goes beyond binding law. Child protection infrastructure is also at risk as a result of Brexit and this includes:

- the EU's law enforcement agency (Europol),
- The Judicial Cooperation Unit (Eurojust)
- The European Criminal Records System (ECRIS) where Member States can exchange information on criminal records.
- The European Arrest Warrant (EAW), a fast-track extradition procedure, often used for those suspected of crimes against children, including abduction

It is worth noting that factions of the Leave campaign questioned the usefulness of the EAW, suggesting that it was unnecessary interference. The Scottish Government must insist on maintaining this essential procedure and ensure that its benefits to children are noted.

¹⁷ Article 5 (2) EU Charter

¹⁸ Article 32, EU Charter

¹⁹ (Article 4 (2)).

²⁰ Articles 2 (2) and 5).

²¹ The EU Charter also prohibits this under article 5 (3)

²² <https://news.liverpool.ac.uk/2016/05/27/eu-ref-not-seen-not-heard-implications-brex-it-children/>

Other initiatives at risk are Europol's European Cybercrime Centre, the European Commission's 'Strategy for a Better Internet for Children', the European Framework for Safer Mobile Use by Younger Teenagers and Children, the Missing Children Hotline and the Daphne Programme which has funded many child protection initiatives.

Other child protection areas

EU competence in family life

This competence relates to cross-border disputes, including recognition and enforcement of judgments across the EU. Article 24 (3), EU Charter recognises the child's right to maintain on a regular basis a personal relationship and direct contact with both parents, unless contrary to the best interests. In line with EU competence²³ there is a focus on judicial cooperation. Two EU instruments are relevant: Brussels II bis²⁴ and the Mediation Directive²⁵. Brussels II bis ensures that contact or residence are recognised and enforced in other Member States ensuring a uniformity to family law (jurisdiction is generally conferred to the courts connected to the child's habitual residence) and specifies procedures around international child abduction. It complements and takes precedence over the Hague Convention in intra-EU abduction. Brussels II bis must be interpreted in accordance with EU Charter provisions, particularly Article 24 (the 'child rights article'). The CJEU clarified this in *Aguirre Zarraga*²⁶, ruling that the child's right to be heard requires legal procedures and conditions which enable children to express their views to be available. Given that Member States' national laws around child abduction matters are not compatible, Brexit will result in legal uncertainty for UK cross-border family law cases.

Post Brexit, other non-EU international instruments (applying to non-EU countries) could apply, such as the 1980 Hague Convention on Child Abduction. The European

²³ So as to create an area of freedom, security & justice in which the free movement of persons is assured

²⁴ Council Regulation (EC) No. 2201/2003/15124

²⁵ Council Directive 2008/52/EC

²⁶ <https://www.abdn.ac.uk/law/documents/CaseComment-AguirreZarragaSimonePelz.pdf>

Children's Rights Unit suggest that another but less likely option would be for the UK to create bilateral agreements on family law with other countries, mirroring current EU legislation, but this would be resource intensive. EU law is quicker, easier and emphasises children's rights (Brussels II bis imposes a six-week deadline in child abduction, ensuring that cases are resolved quicker and cheaper than non-EU proceedings.) Brexit negotiations must retain a children's rights focus e.g. the child's best interests and the right to be heard. Retaining the six-week deadline for child abduction should be an objective, as should UK membership of the European Judicial Network which facilitates information sharing between Courts.

Children's rights issues cannot be tackled by the UK acting alone, and require a co-ordinated response to shared problems. EU membership provided that function, enabling ongoing cross-border exchange and the collation of information. The EU's Fundamental Rights Agency has gathered useful data on child trafficking which has led to new models for vulnerable children, and its framework in cross-border family law has led to increased judicial co-operation and speedy outcomes for abducted children or those caught up in intra- EU disputes over care, parental contact and maintenance²⁷.

Whilst the EU has provided a co-ordinated response to cross border issues, it has also been criticised for being over-concerned with border security and pursuing perpetrators rather than focusing on children's rights. Implementation can also take years, due to having to be transposed into Member States' law systems which are subject to national interpretation²⁸. Stafford also notes that the UK has opted out of much EU child protection legislation, including recent immigration and asylum provisions that enhance protection for vulnerable migrants²⁹. She adds that child protection measures have developed in an ad-hoc way and in disparate policy areas e.g. obligations in the Child Victims Directive³⁰ have not been robustly applied *vis a vis* EU law around child immigrants & asylum seekers. However, *'It is EU law, coupled with a decisive ruling from the CJEU that enabled unaccompanied children*

²⁷ Stafford. H, <https://news.liverpool.ac.uk/2016/05/27/eu-ref-not-seen-not-heard-implications-brexit-children/>

²⁸ Stafford. H, (2016) The potential implications of Brexit for Child Protection, University of Liverpool

²⁹ the Procedures Directive ('recast PD') and Reception Conditions Directives ('recast RCD').

³⁰ Directive 2012/29/EU548

languishing in the Calais jungle to join their family members in the UK. It was the European Commission's threat to initiate infringement proceedings against the UK that has prompted more robust implementation of the EU Trafficking Directive in the form of the Modern Slavery Act 2015'.³¹

EU Migrant Children

EU citizens and their families (children under 21 or dependent) can move to and reside freely in any EU Member State. Under free movement law, they can access education³² and have the right to be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as nationals³³. The CJEU interprets this broadly, ensuring equal access to education and broader, education-related social benefits. They can also access other services such as transport, healthcare, employment and housing on the same terms as nationals. However, the CJEU has declared that EU migrants can only claim these benefits if they can demonstrate a 'right to reside.' This has resulted in the refusal of applications for child benefit or child tax credit by non-economically active EU migrants (who may be carers) having failed the 'right to reside' test, and puts the children of migrants most in need of support at risk. It is also worth recalling the 'February package' which David Cameron negotiated, as this gives an idea of the direction of travel. Based on the UK staying in the EU, the agreement was to limit migrants' access to benefits for four years immediately after the referendum. In-work benefits were to be '*graduated from an initial complete exclusion but gradually increasing*' and migrants would also have been able to send benefits to their children abroad, but in lower amounts. That deal has fallen, but questions remain around child benefit rights of EU citizens in the UK after Brexit and those of UK families living abroad (who have paid in contributions). Brexit negotiations should seek to protect current standards, including the right to claim family benefits for migrants to and from the UK and ensure migrant children's right to access employment, education, healthcare and housing on the same basis as nationals.

³¹ <https://news.liverpool.ac.uk/2016/05/27/eu-ref-not-seen-not-heard-implications-brex-it-children/>

³² and can have free language classes in their mother tongue and in the language of the country are living

³³ including public and private, and compulsory and non-compulsory education.

Forced migrant children

EU rules relating to forced migrant children³⁴ are informed by international law, such as the 1951 Refugee Convention. The UK is bound by this and will remain bound by it post-Brexit. The UK has opted out of much EU immigration law, including family reunification rights for immigrants. Brexit would not necessarily impact much *vis a vis* the law on forced migrant children, since this derives from domestic immigration law, but the UK would lose EU support around resettlement, training, research, data collection, law enforcement and intelligence sharing. There are also suggestions that it might need to renegotiate the EU Dublin Regulation: an increase in asylum claims may occur post Brexit and the UK would not be protected from rules which do not allow asylum seekers to lodge applications other than in the country where they first arrive. Ideally, current EU legal provision should be embedded into UK domestic law and the rights of children seeking international protection to be reunited with family members in the UK should be upheld.

Audiovisual media services

UK children also benefit from EU laws limiting their exposure to TV advertising, violence or other inappropriate images. The AVMS Directive 010/13/EU³⁵ also addresses product placement in children's programmes and authorises Member States to prohibit the display of sponsorship logos during programmes for children (Article 10 (4)).

Consumer and data protection

There is considerable EU legislation and case law, as the TFEU gives EU competence in consumer and data protection. The CJEU has also recognised that the best interests of the child override common market freedoms. There are Directives to ensure that only safe products find their way on to the market³⁶, prohibitions on marketing, importing and manufacturing of products that look like

³⁴ Including asylum seekers, refugees or trafficked persons

³⁵ Audiovisual Media Services

³⁶ Directive 2001/95/EC on general product safety (GPSD).

foodstuffs, but are inedible,³⁷ on nutritional composition and safety of foods such as infant formula³⁸ and on toy safety limiting chemicals contained within³⁹. It is unclear whether these (and others) will need to be repealed or replaced as this will depend on the form of Brexit.

The UK Data Protection Act (1998) is based on Directive 95/46/EC on the protection of individuals regarding the processing of personal data and the free movement of such data. The General Data Protection Regulation will come into force in 2018, but it is unclear how this will develop post-Brexit. It is an increasingly important area for children, not least because of the degree of children's personal data circulated and available through social media. If the UK is part of the Single Market, the UK will be obliged to conform with EU law.

The Environment

Much of our environmental law comes from Directives transposed into domestic law, while some derive from Regulations which are directly applicable in the UK, such as 'REACH' which governs chemicals. In the 1970s and 80s, the UK was referred to as the *Dirty Man of Europe*. Its seas were filthy and it had the highest sulphur dioxide emissions in the EU. Regulation was largely ignored and when targets were breached, legal action was rare⁴⁰. Now, UK bathing water and beaches are cleaner, emissions of sulphur dioxide and nitrous oxide have fallen and UK citizens can rely upon their EU rights: the UK Government has faced legal action over failures to meet obligations under EU air quality regulations to reduce damaging emissions. Children now live in cleaner and healthier environments.

The potential impact of Brexit is difficult to ascertain and a thorough review of environmental law will be required. What should be altered or repealed in whole or in part will also depend on the post-Brexit UK/EU relationship. It might be tempting to remove 'cumbersome regulation'— if EU enforcement mechanisms no longer apply,

³⁷ Council Directive 87/357/EEC

³⁸ Directive 2009/39/EC on foodstuffs

³⁹ The European Commission announced a ban on the use of Bisphenol A (BPA) in plastic baby bottles from 2011

⁴⁰ <https://www.foe.co.uk/sites/default/files/downloads/eu-referendum-environment-81600.pdf>

what incentives will the UK Government have to meet environmental standards? Scotland has a major part to play in setting standards, given that environmental policy is a devolved issue. It is also worth noting that if the UK stays in the Single Market, UK exporters to the EU will still have to ensure their products comply with existing EU regimes such as REACH. Other uncertainties which need addressing are the status of the ECJ rulings and the position of EU negotiated Conventions, such as the UN Framework Convention on Climate Change and the Aarhus Convention. A major challenge will be to ensure effective coordination between other countries, as environmental issues cannot be tackled in isolation. New mechanisms for coordinating with the EU and the UK's four nations may be required.

Employment law

Much of UK employment law is based on EU law and applies across the EU's children. The UK has often taken a minimalist approach to employment rights and has often been shamed by countries with higher standards. Nevertheless Employment Directives, such as on Maternity Rights and Parental Leave (2010/18/EU), are now well established⁴¹ and have allowed children and their families to have a better work-life balance. If these are disapplied or amended, it will have a major impact on family life and children's rights. It is hoped that the Government will not repeal any of these as a knee jerk response, but rather undertake thorough assessments – including child rights impact assessments – on their benefits, and recognise them as being progressive and worthy of being maintained.

Equality and Discrimination

Article 21 of the EU Charter prohibits discrimination on grounds of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age and sexual orientation. Article 19 of the TFEU, however, only covers grounds of sex,

⁴¹ In December 1995, the framework agreement on parental leave, the first agreement between EU level social partners was given legal force by Council Directive in June 1996.

racial or ethnic origin, religion or belief, disability, age and sexual orientation. The EU has adopted various Directives of relevance to children in this area which prohibit discrimination in employment, the welfare system and access to goods and services, all potentially relevant to children.

Other important EU laws and policies affect children's lives or impact on their rights—it is hard to find those that do not. For example, although healthcare systems are not an EU competence, access to healthcare through the European Health Insurance Card (EHIC) is important. Could the UK still participate in the EHIC scheme? Public health measures such as the Tobacco Products Directive which aims to reduce the number of people who start smoking in the EU – especially children and teenagers – are also significant, and have an important cross border role. A further area relates to the funding programmes such as ERASMUS. Many young people have greatly benefited over the years from such schemes. Their future is uncertain.

Holyrood's status in the Brexit negotiations

There is much debate about Holyrood's status in the Brexit negotiations. Former Prime Minister David Cameron said that he expected the devolved administrations in Scotland, Wales and Northern Ireland to play a leading role to ensure that the interests of all parts of the UK are fully taken into account. A recent article heard views from leading academics on this subject⁴². Issues discussed covered which powers currently exercised at EU level would come to Holyrood rather than to Westminster once repatriated, and whether the necessary UK legislation (even if adding to devolved powers), would come under the Sewel convention and require the consent of the Holyrood Parliament. Aileen Mchugh's view was that whilst 'consent is only 'normally' required, it might be argued that this is a situation in which devolved consent could be dispensed with.' Her position was that Holyrood's consent would be necessary to remove the requirements in the Scotland Act 1998 for the Scottish Parliament and Scottish Government to comply with EU law, and

⁴² <http://www.journalonline.co.uk/Magazine/61-7/1021975.aspx> (June 2016) *Brexit: a full menu*

also for any legislation implementing the Brexit negotiations which recasts the law in areas currently covered by EU law, but within devolved competence.

Asked whether, in view of its pro-EU vote, Scotland could remain within the EU while remaining part of a UK that otherwise secedes, she noted practical problems, such as the degree to which EU law could extend: only to areas within devolved competence, or to reserved matters as well insofar as they apply to Scotland, and whether this would require adjustment to the division of competences between Holyrood and Westminster. This could also have implications for free movement within the UK. Furthermore, if only States can be EU members, how would Scotland be represented in EU decision-making and future treaty renegotiations? These questions will need to be teased out over the coming months— and years. What is clear is that if the UK Government and its devolved administrations are no longer required to implement EU Directives, we may see further policy and legislative divergence in devolved areas. Scotland will thus be given an opportunity to progress progressive policies and ensure that children's rights are at the forefront.

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