



JOINT BRIEFING FOR SECOND READING
Leaving without losing: protecting human rights in the EU (Withdrawal) Bill

Overview

Liberty and Amnesty International UK believe that in its current (imprecise) form this Bill poses a significant risk to the rule of law and to fundamental rights. As drafted, its extraordinary handover of law-making power from Parliament to Ministers reorders the UK's historic constitutional balance and puts domestic rights and equality protections at risk. We urge Members to question that blank cheque and insert clear safeguards against misuse of new powers into the Bill. Further, we recommend Members press for amendments to ensure existing rights and equality standards are maintained. Leaving the EU must not result in ordinary people losing their rights.

Suggested Questions/Issues to Raise for Second Reading

- **Non-regression:** Brexit must not result in roll-back of our rights and equalities standards at home. ***Will the government confirm it does not intend for Brexit to reduce human rights and equality standards in the UK, and commit to enshrining that promise in the Bill itself?***
- **Proper parliamentary scrutiny:** Currently, the Bill gives Ministers the power to make sweeping changes to our laws, including equality and human rights law, without effective parliamentary scrutiny. ***Will the government commit to restricting the use of 'Henry VIII' powers in the Bill so that they cannot be used to dilute or diminish equality and human rights laws?***
- **Retaining and accessing protections:** The Bill as drafted not only leaves important protections in the EU Charter on Fundamental Rights out of its retained EU law 'snapshot', but removes the power from ordinary people to enforce what rights they are left with. ***Will the government commit to amending the Bill to ensure people retain their current rights protections after Brexit, and their ability to challenge violations of those rights in UK Courts?***

Clauses 7-9 & Schedule 8: Risks to the Rule of Law, Equality and Fundamental Rights

There has been near-universal concern from civil society and key parliamentary committees at the Bill's gift of delegated Ministerial powers to make wide-ranging changes to UK law without normal democratic scrutiny from the people's elected representatives in Parliament. The clauses gifting these delegated powers to rewrite laws are dangerously unclear and of unprecedented scope and effect. For example, clause 7 permits Ministers to alter UK law (through "subordinate" or "secondary" legislation) where they claim it is appropriate to "prevent, remedy or mitigate" either a "failure" of the retained law to "operate effectively" or similarly deal with any other "deficiency" in retained EU law. These undefined terms are breathtakingly permissive. They would fundamentally alter the relationship between Parliament and the Executive, permitting significant law-making by bureaucratic fiat.

One of the many troubling things these clauses would permit is alteration of existing human rights and equality law. While the Bill prohibits its delegated powers being used to impose or increase taxation, it does not contain any similar safeguards in relation to the many ways (other than amending the Human Rights Act 1998) they could be used to roll-back rights and equalities. There is no sign of the kind of safeguards placed on the (far less sweeping) delegated powers created by the Legislative and Regulatory Reform Act 2006 (see s.3(2)), or similar examples. The decision not to safeguard existing rights is an oversight and leaves the door open to unscrutinised political erosion of these protections.

Further, Schedule 8 of the Bill provides that Ministerial power to make subordinate legislation may in future be used to modify anything at all in the body of retained EU law. There is nothing to stop such modifications eroding substantive rights protections. That is a worrying expansion of Ministerial power to modify legislation beyond what could have been in contemplation at the time the laws were written and allows government, rather than Parliament, broad authority to amend retained EU law in the future.

Multiple Parliamentary Committees have called for safeguards and parliamentary scrutiny procedures to contain the use of these powers. Regrettably, the Bill proposes nothing of the sort. The secondary legislation it contemplates will at best go through the affirmative resolution process. Most will be passed by negative resolution. That means no parliamentary power to amend (and only limited power to examine) what may, intentionally or otherwise, make the sort of substantial policy changes that should be made by elected Parliamentary representatives and not by government bureaucracy. As it stands, the Bill would thus leave parliament less sovereign, weaker, and deprive people of their voice – precisely the opposite of the government’s stated intention in legislating for Brexit.

Liberty and Amnesty International UK propose that Members support clear substantive limits on these powers with express safeguards for human rights and equality protections, designed to prevent hard-won rights from degradation or roll-back after Brexit.

Retaining Rights Protections: The Puzzle of Clause 5(4) and Schedule 1 para 3

Strikingly, the Government’s supposed ‘snapshot’ of EU law to be retained leaves out the EU Charter of Fundamental Rights. Retained EU law, unlike the existing EU law it otherwise copies and pastes, will therefore no longer be interpreted through the lens of Charter rights, nor will people operating in its sphere be protected by them. Instead, the Government says people may rely on the old ‘General Principles’ underlying the rights in the Charter, asserting that they have the same scope - a contentious position that leaves the status of such rights in an uncertain state at best. In its fact sheets accompanying the Bill, the Government states that its intention “*is that the removal of the Charter from UK law will not affect the substantive rights that individuals already benefit from in the UK*”. Further, it says it is “*committed to continuing equal treatment and non-discrimination protections after exit*.” But rights that indisputably stem from the Charter go further than those in domestic law and may not be fully reflected in the ‘General Principles’. Some freedoms in the Charter do not have clear equivalents in the Human Rights Act 1998 or elsewhere, including specific data protection rights and an expanded fair trial right.

Surprisingly, despite the Government’s statements of intent, and even if the Government were right to claim that the General Principles are equally protective as the Charter, Schedule 1 para 3 then goes on to deprive them of any real force. It explicitly removes the existing right of recourse to the UK Courts if the Principles are violated. That ability to enforce rights and equality standards is essential to their value to ordinary people in the UK, as John Walker’s case (below) demonstrates. In the future, such actions will be impossible. That individuals will “*still have recourse to the domestic courts in which there exist similar rights of action based in domestic law*” as the fact sheets set out is not enough – such rights of action are not the same and similar domestic rights do not always exist. Contrary to the Government’s aim, the rights people now benefit from will therefore be eroded by the Bill. The General Principles may be retained but they will be toothless and they do not unequivocally go as far as the Government suggests.

Liberty and Amnesty International UK urge Members to ensure that the Government is held to its promise to ensure continuity and stability by freezing and transposing all EU law after Brexit, without excluding rights and equality protections. We must leave the EU with our rights intact.

What the Bill will take away from us all: John Walker’s story

Just this summer, John Walker relied on EU equality protections to bring his successful challenge to a loophole in UK law that meant employers could refuse to pay same sex partners the same pension benefits as heterosexual couples if the funds were paid in before December 2005. The UK Supreme Court unanimously agreed that the loophole was a violation of the General Principle of non-discrimination in EU law. Using his right of action under the General Principles, Mr Walker thus secured a key victory for LGBTI rights in the UK. That would not be possible under this Bill because there is no domestic equivalent to this equality provision and he would not be able to bring an action using just the General Principles in a UK court.

As John Walker himself has said: “*The Government forced me to fight for 11 years to win the same basic rights as my colleagues. Two months after the Supreme Court ruled against them, I’m still waiting for a guarantee that my partner and thousands of others will be protected after Brexit. We cannot just trust ministers to do the right thing – we need a commitment in the black and white letter of the law.*”

For more information on the issues contained in this briefing, please contact the Liberty or Amnesty International UK teams: (parliament@amnesty.org.uk or CoreyS@liberty-human-rights.org.uk)