

## The EU Withdrawal Bill – House of Lords Report Stage Briefing

### Introduction

The Equality and Diversity Forum (EDF) is the national network of organisations committed to equal opportunities, social justice, good community relations, respect for human rights and an end to discrimination based on age, disability, gender and gender identity, race, religion or belief, and sexual orientation. Further information about our work is available at [www.edf.org.uk](http://www.edf.org.uk). Our members can be found [here](#)

The UK has developed world leading equality and human rights legislation and we consider that it is important to ensure that the legal framework for equality and human rights is not weakened by leaving the EU. This briefing considers the effect of the European Union (Withdrawal) Bill on equality and human rights legislation. Our current equality and human rights provisions need to be protected and it is important to ensure there can be no process for them to be changed without appropriate Parliamentary scrutiny and the involvement of citizens and civil society.

We are concerned by:

- The broad and unconstitutional use of delegated powers which give rise to -
- The potential threat to equality and human rights legislation,
- The way in which CJEU judgments will be taken into account by domestic courts, and
- The exclusion of consideration of the Charter of Fundamental Rights.

### Protecting equality and human rights legislation

The EDF considers that the Bill contains extremely wide and extensive delegated powers in clauses 7 to 9. The current provisions give rise to a real risk that equality legislation could be amended, repealed or revoked using these delegated powers when the Minister considers it appropriate because of a failure or deficiency of retained EU law arising from our withdrawal from the EU.

We urge peers to support amendments that specifically protect equality and to **support these amendments on enhanced protection for certain areas of EU law -**

Amendment 11 laid by Baroness Hayter (Lord Warner, Baroness Smith and Lord Kirkhope)

Amendment 31 laid by Lord Lisvane (Lord Tyler, Lord Goldsmith, Lord Cormack) (to Clause 7)

Amendment 42 laid by Lord Lisvane (Lord Tyler, Lord Goldsmith, Lord Cormack) (to Clause 8)

Amendments 86 & 87 laid by Lord Lisvane (Lord Tyler, Lord Goldsmith, Lord Cormack) (to Clause 17)

## Charter of Fundamental Rights

The Charter of Fundamental Rights provides important protections for rights that fall within the scope of EU law and it operates as an essential part of the body of EU law. The bill specifically excludes the Charter and the Government say that omitting the Charter will not affect 'the substantial rights of any UK citizens'. We do not agree with this assessment.

Specific examples of areas which would be left unprotected by the exclusion of the Charter:

- Access to justice in cases where there are gaps in domestic provisions,<sup>1</sup>
- Access to vocational and continuing training,<sup>2</sup> and
- There would be no right of action in domestic law based on a failure to comply with any of the general principles of EU law, which include the fundamental rights set out in the Charter; and the courts will not be able to dis-apply or quash any law because it is incompatible with any of the general principles of EU law, including fundamental rights.

The Government say that these shortcomings can be made up by the application of relevant UN treaties that the UK has ratified. However, ratification of these treaties does not make them directly enforceable in the UK so they will not provide equivalent rights.

We urge peers to support amendments that retain the Charter of Fundamental Rights and **to support Amendment 15 laid by Lord Pannick (Lord Goldsmith, Baroness Ludford and Lord Deben)**

## Consideration of CJEU judgments

The EDF considers that the provisions in clause 6 on the interpretation of retained EU law are insufficiently clear. The UK courts and tribunals will continue to have to interpret EU law after we leave, as the EU law has been incorporated into our UK law.

Consequently, we consider that the UK courts and tribunals should 'have regard to' anything done by the Court of Justice of the European Union whenever it is relevant to do so. This phrase gives a measure of discretion to British Courts but also keeps our alignment and prevents a race to the bottom.

We urge peers **to support Amendment 21 to Clause 6 laid by Lord Pannick (Lord Goldsmith, Lord Wallace of Tankerness and Viscount Hailsham).**

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<sup>1</sup> For example, when a woman employed in a private capacity by a foreign government in their UK embassy was prevented from bringing a claim of discrimination and harassment because her former employer claimed state immunity the provisions of the Charter were used to ensure that she had a right to access to a Court to adjudicate on her claim. See - *Benkharbouche v Secretary of State for Foreign Affairs* [2017] UKSC 62 at <https://www.supremecourt.uk/cases/uksc-2015-0063.html>

<sup>2</sup> See JCHR, Legislative Scrutiny: The EU (Withdrawal) Bill: A Right by Right Analysis at [https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/774/77404.htm#\\_idTextAnchor001](https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/774/77404.htm#_idTextAnchor001)

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