

## The EU Withdrawal Bill: House of Commons Briefing, June 2018

The Equality and Diversity Forum (EDF) is the national network of organisations committed to equality, human rights and social justice. Our members include Stonewall, Age UK, the TUC, Fawcett Society, MIND, Amnesty International, Disability Rights UK and the Runnymede Trust.

The UK has developed world-leading equality and human rights legislation so it is important to ensure that the legal framework for equality and human rights is not weakened by leaving the EU. It is therefore essential that the European Union (Withdrawal) Bill is strengthened to protect our current equality and human rights laws, and that there can be no process for them to be changed without appropriate Parliamentary scrutiny and the involvement of citizens and civil society.

We therefore urge MPs to address these priorities:

- The broad and unconstitutional use of delegated powers which puts equality legislation at risk – **Amendment 4**
- The exclusion of consideration of the Charter of Fundamental Rights – **Amendment 5**
- The way in which Court of Justice of the EU (CJEU) judgments will be considered by domestic courts – **Amendments 6 – 8**
- The ineffective scrutiny proposed for delegated powers – **Amendments 10, 43, 45 & 110**

### Protecting equality legislation

The EDF considers that the Bill contains extremely wide and extensive delegated powers in clauses 9 & 22. These give rise to a real risk that equality legislation could be ‘amended, repealed or revoked’ using these delegated powers when the Minister considers it appropriate to remedy limitations in the retained EU law arising as a consequence of the UK leaving the EU. It is feared that these provisions could be used to change substantial aspects of our equality law. This new clause would mean that any such changes, apart from those that are purely technical, would have to be made by primary legislation.

We urge MPs to accept amendments that specifically protect equality law, as well as employment, health and safety, consumer standards and protection, and to support Amendment 4 on enhanced protection for certain areas of EU law.

### 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 says that omitting the Charter will not affect ‘the substantial rights of any UK citizens’. We do not agree with this assessment. For example, specific areas which would be left unprotected by the exclusion of the Charter include:

- Access to justice in cases where there are gaps in domestic provisions<sup>1</sup>
- Access to vocational and continuing training.<sup>2</sup>

These limitations are set out more fully in the Advice obtained by the Equality and Human Rights Commission.<sup>3</sup>

The Government say that any 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 MPs to support amendments that retain the relevant parts of the Charter of Fundamental Rights and to accept Amendment 5.

### **Consideration of CJEU judgments**

The EDF welcomes the Government's amendments on the interpretation of CJEU judgments as the original provisions in clause 7 were insufficiently clear. The UK courts and tribunals will continue to have to interpret EU law after we leave, as EU law has been incorporated into 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 appropriate discretion to British Courts while helping prevent a race to the bottom.

We urge MPs to accept Government Amendments 6-8.

### **Scrutiny of delegated powers**

The EDF considers that the Bill has extremely wide and extensive delegated powers in clauses 9 & 22. These powers can be used when the Minister considers it appropriate to 'prevent, remedy or mitigate' a broad range of 'failures of EU law to operate effectively'. The EDF considers that these powers are not subject to appropriately significant scrutiny.<sup>4</sup>

While we welcome the Government's amendment to create a sifting committee to vet the appropriate procedure to be applied to these statutory instruments as a step in the right direction, we do not consider that this procedure will allow either House of Parliament any opportunity to suggest amendments to reflect concerns about the content of the regulation. These powers are too wide to guarantee appropriate scrutiny.

We therefore urge MPs to accept Amendments 10, 43, 45 & 110 passed by the House of Lords.

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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 Charter was used to ensure her right to access to a Court. [Benkharbouche v Secretary of State for Foreign Affairs](#)

<sup>2</sup> JCHR, [Legislative Scrutiny: The EU \(Withdrawal\) Bill: A Right by Right Analysis](#)

<sup>3</sup> See - <https://www.equalityhumanrights.com/sites/default/files/eu-withdrawal-bill-legal-advice-jason-coppel-qc.pdf>

<sup>4</sup> Select Committee on the Constitution, [European Union \(Withdrawal\) Bill: Report](#), para 188