



## Joint Committee on Human Rights Submission: European Union (Withdrawal) Bill Scrutiny

20 November 2017

1. As 31 civil society organisations working towards human rights, democracy and the equal dignity of people across the UK, we are submitting this joint evidence, coordinated by the British Institute of Human Rights.<sup>1</sup> This submission outlines our shared concerns about the impact of the European Union (Withdrawal) Bill ('Withdrawal Bill'), as it currently stands.
2. We are deeply concerned that the Withdrawal Bill, as it stands, will mean a loss of rights and accountability for people in the UK, notably:
  - People's fundamental human rights and equality protections: despite the government's stated intention for the Withdrawal Bill to maintain the status quo, a

number of rights have either been explicitly excluded or it is not clear how minimum standards of protection will be ensured; and

- **Parliamentary scrutiny:** the Bill's provisions for amending transposed EU law vest significant power in ministers rather than parliament, with its associated processes for scrutiny and consideration of the views of civil society.

## **People's fundamental human rights and equality protections**

3. The government has been clear in its intention that "the same rules and laws will apply after exit as the day before" (the 'general rule') and that the Withdrawal Bill "does not aim to make major changes to policy".<sup>i</sup> Rather, "separate primary legislation" will be introduced later to "make such policy changes"<sup>iii</sup> alongside the usual parliamentary scrutiny processes, which include opportunities for debate, discussion and civil society commentary.
4. We are therefore deeply concerned that the Withdrawal Bill specifically excludes the EU Charter of Fundamental Rights and would only retain the General Principles of EU law as interpretative tools. This removes the Charter rights and strips away an individual's ability to bring a legal case based on the General Principles. Both are significant changes to the legal protection of rights in the UK, removing access to Charter rights completely and leaving others without an effective remedy for enforcement. Moreover, and irrespective of the substance of the Charter, explicitly identifying these protections as exemptions to the general rule is a clear and distinct policy change singling out human rights, unlike other areas of EU law being transposed into the Bill. The Bill is intended to ensure the status quo on exit day. It is therefore not appropriate to use the Bill to change the UK's current human rights framework. Any changes to the legal protection of human rights in the UK is a significant constitutional issue, and one which should be subject to robust and full parliamentary scrutiny and involvement of civil society.
5. In terms of substance, the General Principles and the Charter provide an important framework for the protection of human rights and equality, which are separate but complementary to our domestic Human Rights Act. Not having access to the General Principles or Charter rights will have an impact on people's lives. Examples of where these protections have made a difference to people in the UK include:
  - Challenging government surveillance which went too far and was not a justified invasion of privacy; a case brought by the Secretary of State David Davis, with others<sup>iv</sup>;
  - Ensuring John Walker could challenge, and end, pension inequality for same-sex couples<sup>v</sup>;
  - Supporting the recent case in the Supreme Court which found employment tribunal fees implemented by the government were unlawful<sup>vi</sup>;
  - Recognising the importance of health as a fundamental right when tobacco companies challenged regulations to introduce plain packaging of cigarettes.<sup>vii</sup>
6. It is legally possible to incorporate the parts of the Charter and General Principles that protect people's fundamental rights in the UK into the Withdrawal Bill, and to then use the relevant amendment process to remove the parts which do not make sense after exit day (e.g. voting rights in EU elections). In fact, this is the exact way the Withdrawal Bill is intended to work. Specifically treating fundamental rights differently to other transposed

EU law is an unjustifiable policy decision, not in keeping with the intended aim of the Withdrawal Bill.

7. Our concern is further deepened when we consider the government's justification for the policy decision to exclude fundamental rights from the Withdrawal Bill, namely, that their inclusion is unnecessary. The government has not provided a detailed analysis of the current protection of these rights. Whilst we appreciate the acknowledgement of the importance of United Nations international treaties for the protection of human rights, we also note that these are not directly incorporated into UK law. Most importantly, the government has not committed to retaining the protections we do have in UK law post-exit from the EU. In fact, what has been made clear is that the project of replacing the Human Rights Act will be resumed once the government considers Brexit to be underway.<sup>viii</sup>
8. As such, we believe the Withdrawal Bill should be amended to contain specific provision that exiting the EU will maintain, and not dilute, human rights and equality law as it currently stands. This would be a clear commitment to maintaining a "high standards" UK, one in which people's legal protections after exit from the EU are not weakened.

## **Parliamentary scrutiny**

9. Given the constitutional significance of the Withdrawal Bill, we strongly believe there must be full and proper parliamentary scrutiny. The Bill, as it stands, provides Ministers with wide-ranging delegated powers to address uncertainties and deficiencies by enacting new law via secondary legislation. The process proposed for doing this leaves little room for democratic scrutiny, severely reducing the role of parliament in ensuring the government is accountable for the changes it proposes. In principle, this type of "Henry VIII" power is highly problematic for dealing with such a constitutionally significant area; proper democratic accountability through the parliamentary process should be the standard. In practice, the rights and freedoms of people in the UK could be at real risk, amended or lost with very little parliamentary scrutiny.
10. Whilst we welcome the government's stated intention to retain current protection, this is no substitute for the role of parliament. Human rights and equalities protections must be safeguarded from amendment by the use of delegated powers.

## **Conclusion**

11. Ultimately, exiting the EU should not lead to less protection of people's rights; the standards of protection should be equivalent to the current position, and where possible the opportunity to provide additional (not different) rights protections should be taken.

Submitted by:

- The British Institute of Human Rights
- Amnesty International UK
- Anti-Slavery International
- Article 39
- Child Rights Alliance England (CRAE)
- Children in Scotland

- Disability Wales
- End Violence Against Women Coalition (EVAW)
- Equal Rights Trust
- Fife Centre for Equalities
- Howard League for Penal Reform
- Human Rights Watch
- Humanists UK
- INQUEST
- Just Fair
- JUSTICE
- Liberty
- Migrants Resource Centre
- NAT (National AIDS Trust)
- National Survivor User Network (NSUN)
- National Union of Students
- NAWO (National Association of Women's Organisations)
- OPAAL (UK)
- René Cassin
- Southall Black Sisters
- The Traveller Movement
- Together - Scottish Alliance for Children's Rights
- UNISON
- Unlock Democracy
- Women's Aid Federation of England
- Women's Budget Group

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<sup>i</sup> The British Institute of Human Rights coordinates the Human Rights Alliance, an informal network of civil society groups from across the UK, and coordinates a number of other activities that enable civil society groups to have their voices heard in debates about the current and future protection of human rights in the UK. The European Union (Withdrawal) Bill ('Withdrawal Bill'), as it currently stands, has raised significant shared concerns for many organisations we work with, including those that have joined this evidence submission. BIHR can be contacted for further information: Sanchita Hosali, Acting Director, [shosali@bihr.org.uk](mailto:shosali@bihr.org.uk) 0207 882 5850.

<sup>ii</sup> Explanatory Notes to the Bill: <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0005/en/18005en.pdf> para 10 and 14

<sup>iii</sup> Explanatory Notes to the Bill: <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0005/en/18005en.pdf> para 14

<sup>iv</sup> R v Secretary of State for the Home Department ex p David Davis MP, Tom Watson MP, Peter Brice and Geoffrey Lewis [2015] EWCA Civ 1185

<sup>v</sup> Walker v Innospec Limited and others [2017] UKSC 47

<sup>vi</sup> R (on the application of UNISON) v Lord Chancellor [2017] UKSC 51

<sup>vii</sup> British American Tobacco & others v Department of Health [2016] EWHC 1169

<sup>viii</sup> See for example the Prime Minister's response to the Civil Society Human Rights Day 2016 letter here: <https://www.bihr.org.uk/news/over-160-groups-tell-theresa-may-dont-abandon-our-human-rights-act>