

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

**Liberty's submissions to the Joint
Committee on Human Rights' Brexit
Inquiry**

October 2016

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at

<http://www.liberty-human-rights.org.uk/policy/>

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EXECUTIVE SUMMARY

The result of the referendum on the UK's membership of the European Union, and forthcoming withdrawal, carries obvious implications for the protection of rights and freedoms in this country.

Liberty is deeply concerned for the protection of human rights in the UK after Brexit. Strong rights protections will be crucial to the UK's future after the referendum. We seek to underscore the paramountcy of securing hard-won victories for rights into UK law as part of any Brexit settlement.

Liberty urges the Joint Committee on Human Rights to:

- Recommend that Government commissions a comprehensive and independent audit of all statutory instruments relevant to human rights and enacted under section 2 of the European Communities Act 1972, along with all EU-law human rights obligations (including those set down by the case law of the Court of Justice of the European Union) either directly effective in UK law or implemented by any other means, to ensure that they are directly incorporated into primary legislation as part of any 'Great Repeal Bill'.
- Recommend that EU citizens' legal rights are protected and that the rights of British citizens to family reunion are enhanced to match their EU counterparts.
- Recommend that the Government commit to retaining crucial EU-law rights protections for refugees and asylum-seekers in the UK after Brexit.
- Recommend that the Government formally guarantee that all existing EU-law rights protections will be safeguarded.
- Recommend that the Government (i) make overwhelmingly clear its commitment to overcoming hate crime, (ii) take greater concerted action to monitor and curb the rise in hate crime and to ensure it is more effectively investigated and prosecuted, and (iii) give hate crime based on a person's nationality or immigration status equally serious attention and concern as other forms of hate crime, something that the Government's Hate Crime Action Plan manifestly failed to do.

EU law rights protections in UK law

1. The substance of much of EU law is enshrined in Acts of Parliament such as the Data Protection Act 1998, Equality Acts of 2006 and 2010, and in secondary legislation made independently of the European Communities Act 1972 (ECA). It is clear, however, that directly-effective EU law will immediately cease to have effect once the ECA is repealed, as will secondary legislation made under section 2(2) of the Act – since the ECA provides for the direct effect of certain forms of EU law and is the enabling legislation for statutory instruments implementing other obligations under EU law. Many crucial rights protections are included in these instruments, including equality protection for Northern Ireland, protection around reception conditions for asylum seekers and important labour law protections. A list of the secondary legislation that would cease to have effect upon ECA repeal is annexed to this submission.
2. Liberty believes that all EU law rights protections which are either directly effective, or are contained in secondary legislation contingent on the ECA, are replaced with equivalent provisions by way of the primary legislation required to repeal the 1972 Act. Liberty therefore welcomes statements from Government that a forthcoming ‘Great Repeal Bill’ will explicitly incorporate all current secondary legislation whose legal effect hinges on the ECA.¹
3. But gaps in protection will remain. The status of some parts of EU law remains unclear. One example of uncertainty is Council Regulation (EC) No. 1236/2005, known as the Torture Regulation. In essence, it bans the sale of goods the only practical use for which is carrying out torture or the death penalty, and establishes an authorisation system for deciding which goods fall into this category. The requirements of the Regulation are implemented as part of the UK’s Strategic Export Control Lists. However, without any underlying EU law obligations incorporated into UK law by the ECA, it is far from clear that the lists would function to bar the export of those goods. Liberty urges the Committee to recommend that Government commissions a comprehensive and independent audit of all such provisions to ensure that they are directly incorporated into primary legislation as part of any ‘Great Repeal Bill’.

¹ *The Guardian*, ‘Theresa May to trigger article 50 by end of March 2017’, 2 October 2016, available here: <https://www.theguardian.com/politics/2016/oct/01/theresa-may-to-propose-great-repeal-bill-to-unwind-eu-laws>.

4. Two crucial areas of Northern Ireland equality law are set out in Regulations which would fall if the ECA is repealed. The Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 provide the framework of protection against discrimination in employment on the grounds of sexual orientation. They provide that it is unlawful to discriminate on grounds of sexual orientation in employment and vocational training and prohibit direct discrimination, indirect discrimination, victimisation and harassment. Regulations 30 to 32 confer powers and duties on the Equality Commission for Northern Ireland in relation to the ground of sexual orientation, including the general duty of working towards the elimination of discrimination, promoting equality of opportunity between persons of differing sexual orientations etc. Regulations 33 to 41 provide for remedies for individuals, including compensation, by way of proceedings in industrial tribunals and in the county courts.
5. Further, the Employment Equality (Age) Regulations (Northern Ireland) 2006 make it unlawful to discriminate on grounds of age in employment and vocational training. They prohibit direct discrimination, indirect discrimination, victimisation, instructions to discriminate, and harassment. The regulations also provide for rights and duties for the Equality Commission for Northern Ireland and make provision for the enforcement of the regulations through the Industrial Tribunals and for remedies. Both these Regulations are vulnerable on repeal of the ECA, since that Act is its enabling legislation. Since equality law in Northern Ireland remains unconsolidated, with the Equality Act 2010 not applicable to it, it is crucial that these Regulations are retained after Brexit. Liberty urges the Committee to recommend that their protections are safeguarded as part of any future 'Great Repeal Bill'.

Court of Justice for the European Union jurisprudence

6. Furthermore, the status of the case law of the Court of Justice for the European Union (CJEU) is unclear. The CJEU has delivered significant victories in a variety of crucial areas of human rights protection, in particular when applying the EU Charter of Fundamental Rights. In *Digital Rights Ireland*,² for example, the CJEU held that the European Directive governing the retention of communications data was unlawful. As well as striking down the Data Retention Directive, the judgment also set out important parameters of any lawful data retention regime. The Government's replacement legislation – the Data Retention and Investigatory Powers Act 2014 – is now the subject of a legal challenge brought by MP Tom Watson, represented by Liberty, before the CJEU. Whilst judgment is awaited, the Advocate General has

² *Digital Rights Ireland* (C-293/12) and *Seitlinger and Others* (C-594/12) 8 April 2014.

already found the UK's regulatory system wanting and held that access to retained communications data must be subject to prior authorisation, carried out by a court or independent body and must be strictly restricted to the purpose of preventing and detecting precisely defined serious crime.³ Human rights protections laid down by the Court in cases such as these must be included as part of any Brexit settlement, by way of a 'Great Repeal Bill'.

7. The UK's own case law has been enriched through the application of CJEU judgments and EU law, thereby aiding the development of the common law. For example, Liberty is currently representing John Walker, who has brought a claim challenging the discriminatory denial of pension death benefits for same-sex partners. Unlike the vast majority of private occupational pension schemes, the company for which he has worked for 23 years, Innospec, does not treat surviving same-sex spouses and civil partners the same as surviving spouses of other-sex marriages, that is, widows or widowers. As a result, his husband, unlike the spouses of heterosexual employees, will not receive any pension benefits were he to outlive John. Currently before the Supreme Court, his case in part relies on the EU Framework Directive on Equal Treatment in Employment as well as CJEU jurisprudence.
8. Similar examples abound. For example, decisions of the CJEU have been responsible for spurring amendments to the UK's equality law – now represented in the Equality Act 2010 – such as the inclusion of pregnancy status and transgender identity as protected characteristics.⁴ However, uncertainty remains about the status of judgments which have not been incorporated directly into UK legislation, nor is it clear what will be the approach of UK courts to them once we are no longer a member of the EU. Liberty urges the Committee to recommend that these rights protections are directly incorporated into primary legislation as part of any 'Great Repeal Bill'.
9. Moreover, as Professor Catherine Barnard and Professor Aileen McColgan stated in evidence before the Women and Equalities Committee, three areas in which the Government has successfully eroded rights protections in recent years are precisely areas in which there was little or no EU-law holding them back – that is, employment

³ See Liberty, 'Advocate General: Lack of safeguards in Government surveillance law breaches people's fundamental rights', 19 July 2016, available here: <https://www.liberty-human-rights.org.uk/news/press-releases-and-statements/advocate-general-lack-safeguards-government-surveillance-law>.

⁴ See *Webb v EMO* (C-32/93) [1994] ECR I-3567 and *P v S and Cornwall County Council* (C-13/94) [1996] ECR I-2143, respectively.

tribunal fees, unfair dismissal, and trade union voting thresholds. Liberty is concerned that, after Brexit, a backstop against further rights-restricting legislation, especially in the field of workers' rights, will be lost.

10. Liberty urges that crucial EU-law rights protections be safeguarded. The suggested mechanism of a 'Great Repeal Bill' is the most appropriate mechanism for doing so, rather than through separate initiatives. In particular, the protection of rights made vulnerable through Brexit should not be pursued through the Government's threatened replacement of the Human Rights Act with 'British Bill of Rights' proposals, premised as this policy is on the further repeal of fundamental rights protection. Instead, the crucial questions of EU-law rights in domestic law demand resolution as part of the settlement announced with the 'Great Repeal Bill', being some of the most important issues remaining after Brexit. As withdrawal from the EU is implemented, the important victories for human rights from which the UK has benefited during its membership must be retained, and given pride of place within that settlement.

EU citizens in the UK after Brexit

11. Decisions about the future of EU citizens in the UK raise important human rights issues – most obviously the right to respect for private and family life and the right to freedom from discrimination, including discrimination in employment and educational settings. EU nationals in the UK have built their lives on the basis of key legal protections provided by EU law. As a matter of basic fairness and natural justice, their legitimate and reasonable expectations should be respected. This sentiment is shared by 84% of the British public, who believe that EU nationals should be able to remain in this country after Brexit.⁵ Expressing the same view, the House of Commons overwhelming passed a motion in support of the right of EU nationals to remain in the UK.⁶
12. The official Vote Leave campaign proposed that there should be “no change for EU citizens already lawfully resident in the UK. These EU citizens will automatically be granted indefinite leave to remain in the UK and will be treated no less favourably

⁵ Polling from ICM for British Futures, for which see *The Guardian*, 'British want EU migrants to stay after Brexit, says poll', 21 August 2016, available here:

<https://www.theguardian.com/world/2016/aug/21/migration-poll-eu-workers-brexit>.

⁶ For the debate, see House of Commons Hansard, 06 July 2016, column 937. The motion was passed by 245: 2 (division at columns 979-980).

than they are at present.”⁷ However, the new Prime Minister has made clear that she wants this issue to form part of the UK’s Brexit negotiating position. The prevailing uncertainty over the rights of over 3 million EU citizens resident in the UK following Brexit is deeply regrettable, raising as it does the spectre of mass repatriation.

13. Liberty believes that the British government should lead by example, setting the tone for the withdrawal process by making strong commitments to those EU nationals living in the UK. Such commitments, in the interests of fairness and respect for human rights, should be made as a matter of principle. EU nationals should not be treated as bargaining chips, nor should their rights be subject to negotiation nor made contingent upon the actions of other governments. If we took such an approach to the human rights commitments we make to residents of this country, we would face a bitter race to the bottom against regimes with lower standards of protection than we would ever accept.
14. The EU Citizen’s Directive specifies that EU nationals and their family members can move to other member states for an initial 3 month period and thereafter further conditions are to be introduced, including the requirement that the individual be a worker, self-employed, or otherwise self-sufficient, or in the process of seeking employment.⁸ After five years’ legal stay, individuals can obtain permanent residence.⁹ In the interests of fairness, legal certainty, and the right to respect for private life, Liberty believes that these entitlements, including the route to settlement, must remain for all EU nationals in this country prior to the UK’s formal exit from the EU. Considerations of family unity operate strongly in this context as well, with many British nationals and their UK-based EU family members, including British children, suffering the unacceptable anxiety of uncertainty around their family’s future.
15. The same arguments apply to the situation of non-EU family members of EU nationals living in the UK. EU citizens have the right to be joined by a spouse, civil partner, children under 21, and some dependant relatives.¹⁰ Rights to admission on a more limited basis are also extended to unmarried partners and other dependant relatives.¹¹ Whilst this submission cannot cover the full range of entitlements affecting

⁷ Published on the Vote Leave website and widely reported, e.g. *The Guardian*, ‘Would Europeans be free to stay in the EU after Brexit?’, 22 June 2016, available at: <https://www.theguardian.com/uknews/2016/jun/22/will-europeans-be-free-to-stay-in-the-uk-after-brexite>.

⁸ Directive 2004/58/EC of the European Parliament and of the Council of 29 April 2004 (‘the Citizens’ Directive’), Articles 6 and 7.

⁹ Citizens’ Directive, Article 16.

¹⁰ Citizens’ Directive, Articles 1 and 2.

¹¹ Citizens’ Directive, Articles 1 and 2.

EU citizens, particular mention should be made of the need to ensure that protection for access to healthcare and non-discriminatory access to employment and education are retained.

16. Fairness and respect for the right to family life demand that legal protections remain in place for those EU nationals living in the UK. Yet family life protections are not presently equally afforded to British nationals who instead face legal obstacles to family unity with a non-EU spouses. As a result of reforms in 2012, while EU citizens are able to bring non-EU spouses to the UK unimpeded, British citizens with non-EU family members face a financial threshold and English language requirement before being able to bring a spouse to the UK.¹² These rules, and the difference in treatment they represent, are unjustifiable. It is deeply anomalous that British citizens are denied human rights protection that is afforded to EU citizens.
17. This anomaly has devastating consequences for British citizens separated from their loved ones.¹³ Under the minimum income requirement, those wishing to bring a non-EU spouse or partner into the UK must earn over £18,600. It is estimated that over 43% of the UK population don't meet this requirement. An APPG on Migration inquiry found that as a consequence of the new rules, British citizens and permanent residents, including people in full-time employment, have been separated from a non-EU partner.¹⁴ Research by the Children's Commissioner and JCWI found that around 15,000 children had been negatively affected by the rules, either separated indefinitely from an exiled parent or British citizen children forced to live outside the UK.¹⁵ A challenge against this rule which argues that it breaches Article 8 of the HRA has been heard by the Supreme Court and judgment has been reserved.¹⁶ As part of its Brexit settlement, the UK should ensure that protection for British citizens and their families is equalized with EU citizens remaining in the UK.

¹² For more see 'Liberty's Response to the Home Office's Consultation on Family Migration', October 2011, available at: <https://www.liberty-human-rights.org.uk/sites/default/files/liberty-s-response-to-the-home-office-s-family-migration-consultation-oct-11.pdf>, and 'Liberty's submission to the All Party Group on Migration's Inquiry into the new family migration rules', January 2013, available at: <https://www.liberty-humanrights.org.uk/sites/default/files/changes-to-immigration-rules-briefing-on-family-migration-inquiry-jan-2013.pdf>.

¹³ See the selection of real-life stories on the BritCits website: <http://britcits.blogspot.co.uk/search/label/stories>.

¹⁴ All Party Parliamentary Group on Migration, Report of the Inquiry into new family migration rules. June 2013 Available online at: <http://www.appgmigration.org.uk/family-inquiry>.

¹⁵ Children's Commissioner, Skype Families, September 2015. Available online at: <http://www.childrenscommissioner.gov.uk/sites/default/files/publications/SkypeFamilies-CCO.pdf>.

¹⁶ *R (on the application of MM (Lebanon)) (AP) (Appellant) v Secretary of State for the Home Department (Respondent)*.

18. By securing the position of EU nationals and sending a strong message that their rights and freedoms will be protected in the same way, regardless of the country's decision to leave the EU, Government and elected representatives can send a strong message to those who consider the Brexit vote lends credence to prejudice. Liberty urges that the Joint Committee recommend that EU citizens' legal rights are protected and that the rights of British citizens to family reunion are enhanced to match their EU counterparts.

Refugee protection after Brexit

19. EU law, and the Common European Asylum System that it creates, has instituted a framework for refugee processing and protection across its Member States. Liberty, along with many other organisations, have criticised some aspects of this regime, such as the discredited and dysfunctional 'Dublin system'¹⁷ – the Regulations which, since the early 2000s, have permitted states further from the borders of the EU to return those seeking sanctuary to states such as Greece and Italy whose overloaded systems have generated serious and well-documented rights abuses.
20. However, other aspects of EU law have imposed a floor on rights protection below which states cannot slide – particularly in the conditions for the reception of those seeking asylum and in the processing of their claims. Much of these rules have been incorporated directly into UK secondary legislation made under enabling statute other than the ECA and by way of the Immigration Rules. However, some would be vulnerable if not replaced in the legislation brought forward to repeal the ECA.
21. The Asylum (Procedures) Regulations 2007, for example, include provision requiring that the Government pays for interpreters where an individual makes an asylum or human rights claim.¹⁸ The Regulations – also enacted under section 2(2) of the ECA – further enshrine the entitlement of individuals to an interpreter for some types of proceedings. The current Government has recently increased fees to access the Tribunal in immigration and asylum matters by 600% – a regressive, punitive measure which will deny access to justice and denigrate the rule of law. In view of this record, Liberty urges the Committee to recommend that the minimum floor of asylum protections required by EU law are retained in any 'Great Repeal Bill'.

¹⁷ The current rules are contained in the Regulation known as Dublin III, Regulation (EU) No 604/2013.

¹⁸ Regulation 5.

22. Other areas of EU asylum law are particularly important. The EU Qualification Directive created a legal obligation on member states to afford “subsidiary protection” to individuals facing a real risk of serious harm in their home country, but who do not qualify for refugee status.¹⁹ Protection is granted where substantial grounds have been shown for believing that the individual would face a real risk of suffering serious harm if returned.²⁰ This provision explicitly includes ‘serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict’.²¹ For the purposes of humanitarian protection, ‘international or internal armed conflict’ is broadly defined as any situation of indiscriminate violence caused by armed factions or by a state which reaches the level of seriousness prescribed by the Court of Justice of the European Union (CJEU).²² Those granted humanitarian protection attract broadly the same treatment as Convention refugees including leave to enter for 5 years followed by an opportunity to apply for settlement and to be reunited with some nuclear family members in the UK.
23. These provisions are central to the UK’s modern response to contemporary conflict and humanitarian disaster. Indeed, this is the principle form of protection provided to Syrians and others fleeing the devastating consequences of current wars – these being the primary drivers of the refugee crisis. The UK implemented its obligations to provide such protection in October 2006 by enshrining a humanitarian protection policy in the Immigration Rules.²³ It is therefore not immediately vulnerable on repeal of the ECA. However, Liberty urges the Committee to recommend that the Government commit to retaining this crucial area of rights protection for those seeking sanctuary in the UK after Brexit, in view of its paramount importance in the UK’s future asylum policy outside the EU.

Hate crime and discrimination

24. There are also pressing rights issues which have arisen since the referendum vote. Since then, there have been multiple and shocking reports of xenophobic, racist, Islamophobic, homophobic, and other hate crimes. These crimes have ranged from vandalism and verbal abuse to serious physical violence and even alleged murder. In

¹⁹ Council Directive 2004/83/EC, articles 2(e) and 18.

²⁰ HC 395, paragraphs 339C(i)-(iii).

²¹ HC 395, paragraph 339C(iv).

²² Where the level of violence is such that, without anything to render them a particular target, civilians face real risks to their life or personal safety: see *Elgafaji v Staatssecretaris van Justitie* (Case C-465/07), 17 February 2009.

²³ Cm 6918 inserting paragraphs 339C-339H into the Immigration Rules: HC 395.

recent weeks details have emerged of an attack on a group of Polish men in Harlow, currently under investigation by police as an incident of hate crime, which resulted in the murder of Arkadiusz Jóźwik, a member of London's Polish community. These horrifying events were followed by reports of a further attack on two Polish men in the same area – also under investigation as a hate crime. The Polish Embassy in London reported in August that its staff have dealt with multiple incidents of hate crime since the Brexit vote.²⁴

25. In fact, since the referendum, the National Police Chiefs' Council (NPCC) reported a 57% rise in hate crime,²⁵ with later figures demonstrating a lasting rise.²⁶ A 41% rise in reported hate crimes has since been reported in official figures released by the Home Office in October.²⁷ Indeed, as Mark Hamilton, head of the NPCC stated:

“I believe the referendum debate has led to an increase in reporting of hate crime. It is very clear in the last couple of weeks that more people have been aware of experiencing such incidents than we have had before...Some people took that as a licence to behave in a racist or other discriminatory way. We cannot divorce the country's reaction to the referendum and the increase in hate crime reporting.”²⁸

26. Moreover, the surge in hate has been directed far beyond EU nationals to all 'visible minorities'. Black equality organisations have reported incidents of abuse reminiscent of the 1970s.²⁹ In early September police in Bristol announced that they were investigating an apparently racially-motivated assault on a 10-year-old boy by two

²⁴ *The Independent*, 'Polish ambassador says his staff have dealt with '15 or 16' hate crimes since Brexit vote', 31 August 2016, available here: <http://www.independent.co.uk/news/uk/politics/brexit-hate-crime-racism-polish-man-killed-harlow-mp-eu-referendum-result-immigration-arkadiusz-a7218711.html>.

²⁵ National Police Chiefs' Council, 'Hate crime is unacceptable in any circumstances, say police', 27 June 2016, available here: <http://news.npcc.police.uk/releases/hate-crime-is-unacceptable-in-any-circumstances-say-police>.

²⁶ *The Independent*, 'Brexit caused lasting rise in hate crime, new figures show', 8 September 2016, available here: <http://www.independent.co.uk/news/uk/crime/brexit-hate-crime-racism-eu-referendum-poland-islam-more-in-common-a7231836.html>.

²⁷ *The Guardian*, 'Hate crimes soared after EU referendum, Home Office figures confirm', 13 October 2016, available here: <https://www.theguardian.com/politics/2016/oct/13/hate-crimes-eu-referendum-home-office-figures-confirm>.

²⁸ *The Huffington Post*, 'EU Referendum To Blame For Hate Crime Rise, Senior Police Officer Says', 11 July 2016, available here: http://www.huffingtonpost.co.uk/entry/eu-referendum-to-blame-for-hate-crime-rise-senior-police-officer-says_uk_5783a656e4b07a99eadd0170.

²⁹ See The Monitoring Group event 'Brexit, Racism and Xenophobia' in Tottenham, attended by over 400 local people, July 2016.

other children.³⁰ As Faith Matters founder, Fiyaz Mughal, has pointed out, “the Brexit vote seems to have given courage to some with deeply prejudicial and bigoted views that they can air them and target them at predominantly Muslim women and visibly different communities”.³¹ Tell Mama, an organisation working to fight Islamophobic hate crime, has received reports of Muslim women facing taunts of “we voted you out, why are you still here”, and “today’s the day we get rid of the likes of you.”³²

27. The UN Committee on the Elimination of Racial Discrimination issued a report in August which noted its deep concern “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.”³³

28. Thus far, the Government has failed to properly respond to these concerning developments. In fact, it has appeared to abate them, with the profoundly disturbing suggestion from the Home Secretary to force companies to name their non-UK workers, in addition to her announcement to deepen and intensify efforts to create a ‘hostile environment’ for migrants by excluding them from basic services. Liberty is deeply concerned by this divisive, discriminatory, and damaging rhetoric which is clearly emboldening those with prejudiced views to act in a hateful and violent manner towards minority groups.

29. This rhetoric is currently a feature across the political spectrum, with MP Rachel Reeves around the same time speaking of “bubbling tensions in this country” that “could explode”, with her constituency an alleged “tinderbox”. Elected politicians’ use of their public platform to issue such warnings and stoke tension in this manner is not a new phenomenon. However, society’s response to it have changed; the sort of

³⁰ *The Guardian*, ‘Police investigate alleged racist attack on 10-year-old in Bristol’, 6 September 2016, available here: <https://www.theguardian.com/uk-news/2016/sep/06/boy-10-racially-assaulted-in-bristol>.

³¹ *The Huffington Post*, ‘Racist Attacks After Brexit Soar As Hate Crimes Reported To Police Increased By 57%’, 28 June 2016, available here: http://www.huffingtonpost.co.uk/entry/post-brexit-racist-attacks-soar-hate-crimes-reported-to-police-increase-57_uk_57714594e4b08d2c5639adcb.

³² See *The Huffington Post*, 28 June 2016.

³³ UN Committee on the Elimination of Racial Discrimination, ‘Concluding observations on the twenty-first to twenty-third periodic reports of United Kingdom of Great Britain and Northern Ireland’, 26 August 2016, available at: http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GBR/CERD_C_GBR_CO_21-23_24985_E.pdf.

statements for which former MP Enoch Powell in 1968 was, in effect, nationally ostracized have sadly become part of mainstream political discourse.³⁴

30. As it implements Brexit, the Government must make overwhelmingly clear its commitment to overcoming hate crime. The evidence shows that the referendum vote has been interpreted by some as providing leeway for the expression of toxic and divisive views. One important means of making such a commitment will be to secure the position of EU citizens in the UK – many of whom have since the vote faced hate crime on the basis of their status.
31. The Government should also take greater concerted action to monitor and curb the rise in hate crime and to ensure it is more effectively investigated and prosecuted. The Hate Crime Strategy published by the Home Office in August 2016, provides a useful overview of ongoing initiatives but does not set out a robust strategy for tackling the scourge of hate crime. Racial hate crime makes up 82% of all such crime and is estimated to be severely under-reported. The Home Office's own Hate Crime 'Action Plan', for example, highlighted the disturbing differences between figures on hate crime reported to the police and the hate crime that likely takes place.³⁵ Statistics from the Crime Survey for England and Wales continue to be around four times higher than the numbers of such crimes reported to police, with similarly low rates of prosecution for hate crimes that are reported. Conviction and victim satisfaction rates are low and academics report poor police training and a patchy police response across the country.
32. Furthermore, the bases on which crime is categorised by the Strategy as motivated by hate are all too narrow. The Strategy does not, for example, explicitly include crimes motivated by a person's perceived nationality or immigration status. This must be reformed: hate crime categorisation should reflect the protected characteristics in the Equality Act 2010, and hate crime based on a person's nationality or immigration status should be given equal attention and concern.

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³⁴ See Liberty, 'National Hate Crime Awareness Week 2016: We stand together to reject the politics of hate', 7 October 2016, available here: <https://www.liberty-human-rights.org.uk/news/blog/national-hate-crime-awareness-week-2016-we-stand-together-reject-politics-hate>.

³⁵ Home Office, 'Action Against Hate: The UK Government's plan for tackling hate crime', July 2016, available here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/543679/Action_Against_Hate_-_UK_Government_s_Plan_to_Tackle_Hate_Crime_2016.pdf.