



Liberty and Amnesty International UK – Briefing note on the Charter of Fundamental Rights of the European Union

(Day 2 of Report Stage in the House of Lords, EU (Withdrawal) Bill)

Clause 5(4) of the EU (Withdrawal) Bill excludes the Charter of Fundamental Rights of the European Union from retention after the UK's withdrawal from the European Union. The Charter includes vital fundamental rights protections that do not have clear equivalents in UK law and cannot be relied on directly by individuals in domestic courts.

Not retaining the Charter runs counter to Government assurances that the same rules will apply on the day before exit as on the day after and, contrary to the purpose of the Withdrawal Bill, will create considerable legal confusion and uncertainty.

Liberty and Amnesty International UK urge Peers to support amendment 15 (in the names of Lord Pannick, Lord Goldsmith, Baroness Ludford and Lord Deben) to retain the Charter and ensure our hard-won rights and freedoms are not diminished after withdrawal from the European Union.

What is the Charter?

The Charter is a fundamental rights instrument which became legally binding in the UK in December 2009. The rights provided for in the Charter were drawn from a variety of sources, including the common constitutional traditions of European states, the European Convention on Human Rights (ECHR) and international law instruments such as the United Nations Convention on the Rights of the Child.

The Charter is widely considered to be the most advanced document of its kind and includes rights that cannot be found in any other directly enforceable fundamental rights instrument to which the UK is a party. Unlike older instruments, the Charter contains 'third generation' rights – such as to data protection and guarantees on bioethics – that have proven especially important in protecting people's rights in light of rapid technological and societal change.

The Charter only applies when the UK is implementing EU law (meaning where the UK has given effect to, or has derogated from, an EU law obligation).

Why doesn't the Government want to retain the Charter?

The Government has argued that the Charter is unnecessary and its omission will not result in any loss of substantive rights protections. However, at times, they have also expressed the contrary view: that it adds an extra layer of rights to our domestic human rights framework that is undesirable. Furthermore, the Government has raised concerns that the retention of the Charter – and its application to 'retained' EU law – will lead to legal confusion and uncertainty. Neither of these arguments stand up to close scrutiny.

On providing for legal certainty and continuity, the Charter is the 'key' against which all EU legislation is drafted and against which it is to be understood. This is especially true of legislation passed after its enactment in 2009, including the forthcoming General Data Protection Regulation. Without this key, interpretation will be highly

problematic. Moreover, the UK may, after withdrawal, find itself in the bizarre position of applying retained EU law which the Union finds to be in violation of the Charter – and consequently strikes it down – or interprets differently because of it.

Why we should keep the Charter

The Charter protects important rights that have no clear equivalent in UK law and provides a stronger remedy for victims of abuses than under the ECHR (allowing for rights-infringing primary legislation to be struck down by domestic courts versus a declaration of incompatibility being made under the Human Rights Act 1998). A wider range of individuals may also bring claims under the Charter than under the ECHR. Examples of unique Charter rights include:

- Article 24 (rights of the child): this stand-alone right not to be discriminated against has no domestic equivalent in UK law. Article 24 stipulates that children’s best interests must be a primary consideration in all actions that concern them (whether by public authorities or private institutions). The Charter also provides that every child has “the right to maintain on a regular basis a personal relationship and direct contact with both of his or her parents, unless that is contrary to his or her interests”. Although these rights can be found in the United Nations Convention on the Rights of the Child, this instrument has not been incorporated in full into UK law and therefore – unlike the Charter – is not directly enforceable and cannot be relied on by children whose rights have been infringed.
- Article 25 (rights of the elderly): recognises the right of older people to lead a life of dignity and independence and to participate fully in social and cultural life. This right is unique and has no equivalent under the ECHR or any justiciable international treaty or convention to which the UK is a party.
- Article 26 (disability rights): goes further than domestic laws and provides for specific measures to be put in place to ensure the “independence, social and occupational integration and participation” of disabled people in community life. This is more wide-reaching than the ‘Public Sector Equality Duty’ or the – potentially soon to be only interpretive – EU general principles of non-discrimination and equal treatment. In similarity with Article 24, Article 26 draws inspiration from a United Nations Convention – that on the Rights of Persons with Disabilities – which has not been incorporated into UK law and therefore is not directly enforceable in domestic courts.

How would the Charter work after withdrawal?

The Charter would function in the same way after withdrawal as it does currently. Its scope of application would be restricted to the new category of ‘retained’ EU law and our own domestic courts – rather than the European Court of Justice – would be charged with its interpretation. As for redundant references in the Charter, for example, to EU institutions or rights such as those to vote in elections to the European Parliament, these could be amended in line with the intended purpose of the delegated power provided for under Clause 7 of the Bill.

To retain the Charter, please vote to pass amendment 15 (Lord Pannick, Lord Goldsmith, Baroness Ludford and Lord Deben).

For more information on this briefing note please contact either George Wilson (GeorgeW@libertyhumanrights.org.uk) or Scott Dawes (Scott.Dawes@amnesty.org.uk). Our more detailed joint briefing for Report covering the Charter, the general principles of EU law and delegated powers can be found [here](#).