

The Charter of Fundamental Rights

Why We Must Amend the Brexit Repeal Bill to Keep It

A joint briefing paper from:



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The Charter of Fundamental Rights of the European Union has for years provided a clear framework for protecting equality, fairness, and human dignity, and challenging abuses of power. But if the current version of the Brexit Repeal Bill passes Parliament, we will leave those rights behind when we exit the EU. While the Government says the Repeal Bill will retain every other EU law, we won't keep this crucial tool for protecting rights.

This paper explains why Parliament must amend the Repeal Bill to treat the Charter the same way the Bill treats other EU laws – by incorporating it into UK law so that people have the certainty, stability and legal continuity the Government has promised.

What is the Charter of Fundamental Rights?

The Charter protects our rights to life, human dignity, liberty, property, privacy, education, equality, and freedom of expression, thought, conscience and religion. It protects the rights of children, the elderly, LGBT people, and people with disabilities. It protects

workers' rights and the right to conduct business.

The Charter may have been created as "European" document, but it gives UK residents power to protect our own fundamental rights when those rights are abused in this country.

The Government says the Charter duplicates rights protected elsewhere in domestic law and in the European Convention on Human Rights (ECHR). Why do we need the Charter?

Banishing the Charter from the UK because we have other legal sources of rights would be like banning hammers because spanners can also strike nails. The Charter is an important tool for protecting our rights, and we should keep it.

The Charter has been used by real people to protect important rights. Here are some examples:

- When Secretary of State David Davis thought an act of government violated privacy, he and his lawyers turned to the Charter. The court in Davis's case noted that the Charter "clearly goes further, is more specific, and has no counterpart" in other privacy laws. (See *Davis v. Secretary of State for the Home Department*).
- The Charter has been used to challenge the indiscriminate bulk collection of personal data by the government, and to demand that the government protect the personal data it does collect. (See the cases of *Digital Rights Ireland*, *Schrems v Data Protection Commissioner* and *EU/Canada PNR*).
- The Charter has been used by women to fight discriminatory insurance company rules that unfairly charged them more than men ([Association Belge des Consommateurs Tests v Conseil des Minister](#)).
- The Charter is the source of the "right to be forgotten" – that is, a person's right to require that internet search engines do not spread false or hurtful information about them with impunity. (See the case of *Google Spain v AEPD*).
- The Charter has been used by people employed by London-based foreign embassies to ensure they are treated fairly on the job. ([Benkharbouche & Anor v Embassy of the Republic of Sudan](#)).

- The Charter has been used to ensure that the Government cannot make decisions balancing individual rights and national security in secret, without providing some explanation. (*ZZ (France) v Secretary of State for the Home Department*).

It's true that rights *similar* to most Charter rights can be found in ECHR and domestic laws, but similar is not necessarily the *same*. The Charter protects important rights that may not be fully secured by other sources. Here are some examples:

- The Charter's right to **education** includes vocational and continuing training (Article 14). That right helps ensure, for example, that education rights aren't limited to people who attend university.
- The Charter's right to a **fair hearing** and **effective remedy** (Article 47) – unlike some statutory sources of that right – doesn't limit the types of civil proceedings that should be fair. That means losing the Charter could jeopardize the fairness of some hearings – for example, hearings concerning housing for homeless people or immigration and asylum applications. These rights also provide important assurances that people have fair and equal access to our justice system, an issue of great significance as legal aid cuts continue to strain that system.
- The Charter contains a special guarantee on **bioethics** (Article 3) – providing important, modern assurance—especially as technology advances—that people retain control over how their body is used by science.
- The Charter right to **academic freedom** (Article 13) and explicit protection of **artistic and scientific research** from government interference is a right that takes on critical significance as the United States government has been accused of eroding democratic norms against such interference.
- The Charter includes a **right to conduct business** (Article 16) and a right to **conscientious objection**, which no other law explicitly duplicates (Article 10).

“The Human Rights Act 1998 incorporated into our domestic law large parts, but by no means all, of the European Convention on Human Rights. . . . The Charter of Fundamental Rights of the European Union contains, I believe, all of those missing parts **and a great deal more**. . . . [T]he much wider Charter of Rights is now part of our domestic law. Moreover, that much wider Charter of Rights would remain part of our domestic law even if the Human Rights Act were repealed.”

--Justice Mostyn J in [R\(AB\) v Secretary of State](#) [2013] EWHC 3453 (Admin), at [14]

While the UK was in the EU, substantial progress on equality, fairness and human rights was legally bound up with Charter rights. Perhaps some of that progress could have been using other legal instruments. But it wasn't. Leaving the Charter behind means losing that progress, possibly permanently. And if not permanently, losing the Charter at the very least means asking people to re-start hard-fought legal battles for rights we thought we had secured long ago. That's not fair, and it's not what Brexit was about.

Can We Make the Charter Work in the UK After Brexit?

There are some isolated parts of the Charter that don't make sense for the UK after Brexit – like the right to vote and stand for election in the European Parliament (Article 39), or to freedom to reside anywhere within EU states (Article 45). But opponents of incorporating the Charter are wrong to throw the baby out with the bathwater. We can keep the important parts of the Charter—the parts that protect fundamental rights of people in the UK—and leave those no-longer-needed provisions behind, just as the Bill is seeking to do with other references to EU law or institutions that will not apply after Brexit.

In fact, it's the Government's own Bill that risk confusion and disorder after Brexit. Clause 5(5) of the Repeal Bill retains Charter rights if they have been specifically mentioned in an existing court decision and future courts can pretend that the previous decision actually referred to another source of law. We should not be required to do extensive legal research to understand which Charter rights are kept after we leave the EU and which are not. Rather than this legalistic half-measure, we should simply retain the Charter to ensure that the UK public and its businesses have the certainty, continuity and security they need.

Does Keeping the Charter Mean We Have to Stay In the Court of Justice of the European Union?

No. Incorporating the Charter into domestic law—alongside all the other EU laws the Government already intends to incorporate—has nothing to do with the European Court of Justice. Once incorporated, Charter rights would be interpreted and enforced by our own courts.

How Can We Protect Our Charter Rights?

Two amendments to the Repeal Bill are necessary to protect our Charter Rights:

- First, Clause 5(4) of the Repeal Bill—which provides that 'The Charter of Fundamental Rights is not part of domestic law on or after exit day'—must be removed.
- Second, the Bill needs a new clause to prevent roll-back on rights people in the UK reasonably would expect to keep, while allowing the Government to remove provisions of the Charter that simply won't make sense after Brexit—like provisions about the European Parliament and references to EU institutions.

Amendments that would accomplish both of these purposes have already been tabled by MPs from the Conservative, Labour, SNP and Liberal Democrat Parties.

For more information about the Charter or the need for amendments to the Repeal Bill, please contact Corey Stoughton (CoreyS@liberty-human-rights.org.uk), Rachel Logan (Rachel.Logan@amnesty.org.uk), or Alison Pickup (a.pickup@publiclawproject.org.uk).