

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Liberty's submission to British Future's inquiry into the status of EU nationals in the UK

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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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1. Liberty welcomes the opportunity to contribute to British Future's vital inquiry into the post-Brexit position of EU nationals resident in the UK. Decisions about the future of these individuals raise important human rights issues, most obviously around the right to respect for private and family life and the right to freedom from discrimination, including in employment and educational settings.

2. EU nationals in the UK have built their lives on the basis of key legal protections and as a matter of basic fairness 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 Brexit¹ and the House of Commons which overwhelmingly passed a motion in support of the right of EU nationals to remain in the UK.²

3. 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 than they are at present."*³ 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. 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 that approach more broadly 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.

¹ Polling from ICM for British Futures.

² 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).

³ Published on the Vote Leave website and widely reported, e.g. The Guardian, *Would Europeans be free to stay in the EU after Brexit?*, 22nd June 2016, available at: <https://www.theguardian.com/uk-news/2016/jun/22/will-europeans-be-free-to-stay-in-the-uk-after-brexit>.

A political response to hate crime

4. The approach we take towards EU nationals who have built lives in this country further has broader consequences for post-Brexit British society. An unprecedented spike in hate crime has been widely reported following June's referendum result, initially up 42% on the same week in 2015. Hate crime further surged in July, with a 49% increase on 2015 and in the first week of August this surged again to 58% up on the same week in 2015.⁴

5. Immediately after the result, POSK, the Hammersmith based Polish Social and Cultural Association was vandalised with the words "fuck you" scrawled across its doors. In recent weeks details have emerged of an attack on a group of Polish men in Harlow, currently under investigation by police as an incidence 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 incidences of hate crimes since the Brexit vote.⁵

6. The surge in hate has been directed far beyond EU nationals to all 'visible minorities'. Black equality organisations have reported incidences of abuse reminiscent of the 1970s.⁶ In early September police in Bristol announced they were investigating an apparently racially motivated assault on a 10-year-old boy by two other children.⁷ 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"*.⁸ Tell Mama, an organisation working to fight Islamophobic hate crime, has received reports of

⁴ See e.g. The Guardian, *Lasting rise in hate crime after EU referendum, figures show*, 7th September 2016, available at: <https://www.theguardian.com/society/2016/sep/07/hate-surged-after-eu-referendum-police-figures-show>.

⁵ See e.g. The Independent, *Polish ambassador says his staff have dealt with '15 or 16' hate crimes since Brexit vote*, 31st August, available at: <http://www.independent.co.uk/news/uk/politics/brexit-hate-crime-racism-polish-man-killed-harlow-mp-eu-referendum-result-immigration-arkadiusz-a7218711.html>.

⁶ In early July, The Monitoring Group in Tottenham hosted an event "Brexit, Racism and Xenophobia" attended by over 400 local people.

⁷ Police investigate alleged racist attack on 10 year old in Bristol, 6 September 2016, available at - <https://www.theguardian.com/uk-news/2016/sep/06/boy-10-racially-assaulted-in-bristol>

⁸ The Huffington Post, *Racist Attacks After Brexit Soar As Hate Crimes Reported To Police Increase By 57%*, 27th June 2016, available at: http://www.huffingtonpost.co.uk/entry/post-brexit-racist-attacks-soar-hate-crimes-reported-to-police-increase-57_uk_57714594e4b08d2c5639adcb.

Muslim women facing taunts of “we voted you out, why are you still here”,⁹ and “today’s the day we get rid of the likes of you.”¹⁰

7. There is widespread acceptance that hate crime increased as a direct result of the political discourse over the course of the referendum campaign. Mark Hamilton, Head of the National Police Chiefs’ Council, has said:

“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.”

8. 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.”¹¹

9. The tone of the referendum debate and the ensuing consequences demonstrate how divisive political speech has real-world consequences. In implementing Brexit, it is therefore incumbent on Government and all political representatives to prioritise their legal and ethical duties to protect people in the UK from racial abuse and violence. 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.

⁹ The Huffington Post, Racist Attacks After Brexit Soar As Hate Crimes Reported To Police Increase By 57%, 27th June 2016.

¹⁰ The Huffington Post, Racist Attacks After Brexit Soar As Hate Crimes Reported To Police Increase By 57%, 27th June 2016.

¹¹ 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.

10. 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.¹² Racial hate crime makes up 82% of all hate crime and is estimated to be severely under-reported. Conviction and victim satisfaction rates are low and academics report poor police training and a patchy police response across the country. Further the bases on which crime is categorised as hate motivated are narrow and don't, for example, include crimes motivated by a person's perceived nationality or immigration status. This should be reformed; hate crime categorisation should reflect the protected characteristics in the Equality Act 2010.

11. Liberty urges the Committee to recommend that EU residents' rights are granted full protection and to make recommendations for ensuring EU and BME residents' rights are better safeguarded by the criminal justice system.

Residence rights for EU nationals and their family members

12. 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.¹³ After five years legal stay, individuals can obtain permanent residence status.¹⁴ 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 too, 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.

¹² Action Against Hate The UK Government's Plan for Tackling Hate Crime, July 2016, available at - 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.

¹³ DIRECTIVE 2004/58/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2004, Articles 6 and 7.

¹⁴ Ibid., Article 16.

13. The same arguments apply to the situation of the 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.¹⁵ Rights to admission on a more limited basis are also extended to unmarried partners and other dependant relatives.¹⁶

14. Whilst this submission cannot cover the full range of entitlements effecting 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.

Equivalent residence rights for British citizens and their family members

15. 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 such protections are not presently afforded to British nationals. 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.¹⁷ As Liberty has commented on a number of occasions these rules are unjustifiable and it is deeply anomalous that British citizens are denied human rights protection that is afforded to EU citizens.

16. This anomaly has devastating consequences for British citizens separated from their loved ones.¹⁸ 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

¹⁵ Ibid., Articles 1 and 2.

¹⁶ Ibid., Article 1 and 2.

¹⁷ 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-human-rights.org.uk/sites/default/files/changes-to-immigration-rules-briefing-on-family-migration-inquiry-jan-2013.pdf>.

¹⁸ See the selection of real-life stories on the BritCits website: <http://britcits.blogspot.co.uk/search/label/stories>.

people in full-time employment, have been separated from a non-EU partner.¹⁹ 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.²⁰ 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.²¹

17. Liberty asks that the British Future inquiry 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.

Rights emanating from EU law which effect all British residents

18. The substance of much of EU law is enshrined in Acts of Parliament such as the Equality Acts 2006 and 2010 or in secondary legislation made independently of the European Communities Act 1972 (the ECA).

19. It is clear, however, that directly effective EU law will immediately cease to have effect should the ECA be repealed, as will secondary legislation made under section 2(2) of the Act.²² 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.

20. Liberty asks that the British Future inquiry recommend that all EU rights protection which is either directly effective, or contained in secondary legislation contingent on the ECA is replaced with equivalent protection by way of the primary legislation required to repeal the 1972 Act.

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¹⁹ 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>.

²⁰ Children's Commissioner, Skype Families, September 2015. Available online at: <http://www.childrenscommissioner.gov.uk/sites/default/files/publications/SkypeFamilies-CCO.pdf>

²¹ *R (on the application of MM (Lebanon)) (AP) (Appellant) v Secretary of State for the Home Department (Respondent)*.

²² European Communities Act 1972, section 2(1) provides for direct effect, section 2(2) provides for implementation through secondary legislation.