

## The rights risks for post-Brexit UK

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On 31 January 2020 the United Kingdom exited the European Union. This is already having an impact on the rights and equalities standards we enjoy (see the Equality and Human Rights Commission's [Human Rights Tracker](#) for examples), and it is important that we advocate to ensure more protections are not lost.

Three main ways in our exit from the EU will impact upon human rights and equality standards for people living in the UK are; through the potential **removal of laws protecting human rights and equality originating in EU law and no longer implementing future EU laws domestically**, the loss of the statutory footing of **caselaw from the Court of Justice of the European Union (CJEU)** and the **loss of the Charter of Fundamental Rights of the European Union**. The latter two were drawn as red lines by the UK in its [White Paper](#) on the Repeal Bill in March 2017.

### The Court of Justice of the European Union

The CJEU has been instrumental in driving forward domestic legislation in the UK to a more substantive application of equality and human rights for many minority groups including women, children and young people, disabled people, workers, migrants and members of the LGBT+ community (see [this](#) report from the Human Rights Consortium).

As we noted in January 2021 in [joint work](#) with [Equally Ours](#), the [EU \(Withdrawal\) Act 2018](#) did include an amendment that UK courts and tribunals could 'have regard to' its case law, but that it will no longer be on a statutory footing. CJEU rulings/case law can now also be challenged in the UK courts, and these can help unpick the existing laws on these rights and standards if the challenge is found favourable.

### The EU Charter of Fundamental Rights

We also highlighted in January 2021 that our biggest loss of rights from Brexit is undoubtedly the loss of the EU Charter of Fundamental Rights (the Charter). The Charter brings together the fundamental rights of everyone living in the EU, including the rights protected by the [European Convention on Human Rights](#) (Article 52(3)), the constitutional traditions of the

Member States, and the rights contained in other international conventions to which the EU or its Member States are parties.

Unlike say, the ECHR, the Charter reflects the indivisibility of civil, political, economic and social rights. Title V (Solidarity) for example provides protections for a number of ESC rights including collective bargaining and action (Article 28), fair and just working conditions (Article 31), prohibition of child labour and protection of young people at work (Article 32), social security and social assistance (Article 34), and healthcare (Article 35). In addition, unlike the Human Rights Act, the Charter contains a free-standing right to prohibition of discrimination (Article 21), and a specific article on equality between men and women (Article 23), which does not prohibit positive action, (a feature of substantive equality which seeks to help to achieve equality by using a protected characteristic to benefit a disadvantaged group).

## **Other EU legal measures**

The right to work (Article 6) and the right to just and favourable conditions of work (Article 7) are key economic, social and cultural (ESC) rights and are clearly outlined in [ICESCR](#). The laws of the European Union have done much to realise these rights in practice in the UK. Article 151 of the [Treaty on the Functioning of the EU](#) clarifies that workers are not merely economic assets to the EU, but rather should be supported through employment to, *“improved living and working conditions, ... proper social protection, [and] ... dialogue between management and labour.”* Taken with the protections included in the Charter, it is clear that, *“This situates any discussion on regulating employment within the EU firmly within a clear human rights framework.”* (Human Rights Consortium, [Rights at Risk: Brexit, Human Rights and Northern Ireland](#))

Employment law directives at an EU level provide for issues important to achieving just and favourable conditions of work including health and safety in the workplace (see for example [Directive 89/391/EEC](#) and [Directive 92/85/EEC](#)), rights of employees when ownership of a company is transferred ([Directive 2001/23/EC](#)), and a wide range of anti-discrimination measures (including [Directive 2000/43/EC](#), [Directive 2000/78/EC](#) and [Directive 2006/54/EC](#)).

We are now in a more perilous situation in relation to rights and equalities protections, as noted by [Murray, O'Donoghue and Warwick](#), *“The UK Parliament will be able post Brexit to alter any retained EU law by standard processes of law making, and thereby diminish rights protections.”*

In addition, we are already falling behind the EU in terms of protection for workers. An example of this is the [Work-life Balance Directive](#), which will not be implemented in the UK.

The directive introduces a set of legislative actions with aims including:

- better supporting a work-life balance for parents and carers,
- encouraging a more equal sharing of parental leave between men and women

Moving forwards, in March 2021 the European Commission presented a [proposal](#) on pay transparency that sets out measures, such as:

- pay information for job seekers,
- a right to know the pay levels for workers doing the same work,
- gender pay gap reporting obligations for big companies

The application of these directives to improving the just and favourable conditions of work are clear, however people within the UK will not benefit from them.

The terms on which the UK left the European Union has resulted in a loss of rights and equalities standards for people in the UK, and further protections are at risk. However, it does not have to be this way. In the UK parliament is supreme and so it has within its powers the ability to forge ahead and modernise our human rights and equality protections. Examples that it could do immediately would be to introduce [Section 1 of the Equality Act 2010](#) (the socio-economic duty) as Wales and Scotland have done, and also to look at ways to bring rights within ICESCR into domestic legislation and the [Scottish Parliament](#) is currently working towards. If we are rethinking the UK's place in the world – this should include ways to remain a world leader in rights and equalities protections.

## **Further information**

Just Fair is a charity (charity number: 1141484 company number: 07394478)

## **Contact information**

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