



EU (Withdrawal) Bill

Department
for Exiting the
European Union

Factsheet 6: Charter of
fundamental rights

repeal-bill@dexeu.gov.uk

The Charter of Fundamental Rights

- The Charter of Fundamental Rights of the EU (the Charter) brought together in a single document the fundamental rights protected in EU law. It reaffirmed the rights and principles that already existed in EU law.
- The Charter was given legal effect by the Lisbon Treaty on its entry into force in December 2009. Article 6(1) Treaty on European Union (TEU) provides for the Charter to have the same legal status as the EU Treaties.
- The Charter applies to EU institutions all the time, but only applies to a member state when it is acting within the scope of EU law.
- It is comprised of rights which already existed in EU law and were drawn from many sources including the constitutional traditions and international obligations common to the member states and the European Convention on Human Rights (ECHR). Many of these rights are provided for in domestic law under the Human Rights Act 1998.
- Some Charter articles contain principles rather than rights, and others contain both. Article 52(5) states that principles 'may be implemented by legislative and executive acts' taken by the EU institutions and member states when implementing EU law, and are 'judicially cognisable only in the interpretation of such acts and in ruling on their legality'. So the Charter makes clear that principles are not capable of having the same effects as rights.

Lords Report Stage Update to the Bill

- The Bill, as introduced, provided that the Charter would not form any part of domestic law on or after exit day. This would not however have affected the retention of underlying fundamental rights which exist irrespective of the Charter.
- On 23 April 2018 the House of Lords amended the Bill to provide that only the preamble to the Charter and Chapter V (which relates to citizens' rights) are excluded from retained EU law.
- This amendment would therefore retain any directly effective rights contained in the remainder of the Charter in domestic law after exit, to the extent that these

would not form part of domestic law in any event under the Bill. Claimants would therefore continue to be able to bring legal action grounded on these rights as expressed in the Charter. The outcome of this action could be that domestic legislation (including retained EU law) could continue to be struck down on the basis of incompatibility with Charter rights.

- The Government will review this decision when the Bill returns to the House of Commons to ensure we deliver a workable piece of legislation that provides certainty as we leave.

Government's position on the Charter

- The UK has a longstanding tradition of ensuring our rights and liberties are protected domestically and of fulfilling our international human rights obligations. The decision to leave the EU does not change this.
- The Charter did not create any new rights. Instead it was intended to reaffirm the rights that already existed in EU law, including case law of the CJEU.
- The substantive law and the principles which underpin the Charter will be converted into domestic law. As such, they will continue to be enshrined in UK domestic law, through domestic legislation, the common law or retained EU law.
- The Government's intention is that, in itself, not incorporating the Charter into domestic law should not affect the substantive rights that individuals already benefit from in the UK, as the Charter was never the source of those rights. For the purposes of clarifying this position, the Government published the '[Charter of Fundamental Rights of the EU Right by Right Analysis](#)' in December 2017 which sets out, non-exhaustively, how the Government considers that fundamental rights that are currently protected by EU law will be protected after exit from the EU.
- The Charter of Fundamental Rights is only one element of the UK's human rights architecture. The Bill makes no changes to the UK's obligations under the ECHR, nor under the Human Rights Act 1998 that gives effect to the ECHR. This Government has been clear that it has no plans to withdraw from the ECHR. Individuals will still be able to bring a claim under the Human Rights Act 1998 as they can now.
- It is the Government's position that it cannot be right that the Charter of Fundamental Rights of the EU could be used in its own right, post-exit, to bring challenges after the UK's withdrawal from the EU.