



LCHR

Labour Campaign for Human Rights

**HUMAN RIGHTS AND WORKERS' RIGHTS AFTER
BREXIT**

APRIL 2017

Executive Summary

On 23rd June 2016 the UK voted to leave the European Union. On 2nd October 2016, the Prime Minister gave a speech at the Conservative Party Conference in which she set out the timeline for triggering Article 50 and also announced the introduction of the Great Repeal Bill, which will end the application of EU law in the UK. She has since further outlined her objectives in a speech detailing the government's intention to take Britain out of the single market and parts of the customs union, and to negotiate a comprehensive free trade agreement in their place.

The Government has also produced a white paper for the Great Repeal Bill, which includes so-called 'Henry VIII' powers, allowing the Government to alter EU-derived legislation without the normal parliamentary scrutiny. LCHR is therefore concerned that crucial employment and equality rights currently derived from EU law may be restricted or even removed from UK legislation, possibly bypassing the normal legislative process. We have produced this briefing in order to make recommendations for the protection of those rights in the UK.

LCHR's recommendations:

- Labour should continue to insist that all current human rights and workers' rights provisions derived from EU law should be fully retained in UK legislation, including gains made through CJEU case law.
- Delegated powers such as the Henry VIII clause should be removed from the Great Repeal Bill or, at the very least, restricted in scope to protect human rights and workers' rights legislation.

Rights guaranteed?

LCHR is concerned that the Government may, during or after the Brexit process, take the opportunity to curtail human rights and workers' rights that are currently derived from EU law. Following Brexit, even EU-derived rights that are enshrined in UK legislation will no longer have the protection of EU law or the EU courts, and could easily be removed through a domestic parliamentary repeal process.

When questioned recently by the Joint Committee on Human Rights, the Government was unclear which rights it is going to guarantee during and following Brexit. The Secretary of State for International Trade, Liam Fox MP, has mentioned guaranteeing workers' rights, but according to the Joint Committee he, "provided an extremely limited response to our questions...Notably, the Government failed to provide us with any substantive written evidence"¹. Though Theresa May has given some assurances that she intends to retain EU rights, it is concerning that prior to becoming Prime Minister she openly criticised Labour for signing up to EU rights such as the 48 hour working week.²

At a glance: rights derived from EU law

Certain rights enshrined in British law are actually derived from EU directives or regulations. Below we have included a list of examples, but it is not exhaustive.

The Working Time Directive

Implemented in the UK in 1998, the Working Time Directive introduced a maximum 48-hour working week. As a result, the TUC estimates there are now 700,000 fewer employees working more than 48 hours a week in comparison to 1998.³ It also gave UK workers the right to paid annual leave.

¹ Joint Committee on Human Rights, 'The Human Rights Implications of Brexit', 14th December 2016. <http://www.publications.parliament.uk/pa/jt201617/jtselect/jtrights/695/695.pdf>

² Doubts cast on Theresa May's pledge to protect workers' rights post-Brexit, The Guardian, November 2016, <https://www.theguardian.com/law/2016/nov/07/doubts-cast-on-theresa-mays-pledge-to-protect-workers-rights-post-brexit>

³ TUC, UK Employment Rights and the EU, p5.

Equal pay for equal work

Though the UK had its own Equal Pay Act (1970), the EU-derived principle of 'equal pay for equal work' helps ensure pay equality in contexts where women's work, for example, is undervalued.

Data Protection Act

The Data Protection Act helps to protect people's privacy by regulating how companies and institutions manage personal data, and is derived from the EU Data Protection Directive.

Anti-discrimination protections

The EU Framework Equal Treatment Directive ensures that people should not face workplace discrimination on the grounds of age, religion and belief, or sexual orientation.

Rights for part-time, fixed-term, or agency workers

The EU has produced a series of directives that have helped to bring the rights and benefits of part-time, fixed term, and agency workers more into line with those of permanent employees.

Henry VIII clause

There is also a problem with the way in which the Great Repeal Bill is put into practice: because the government will want to push through legislation efficiently, it has opted to include in the Bill what is known as a 'Henry VIII' clause. In short, this means that any EU-derived laws could be altered or discarded without the normal parliamentary scrutiny.

While LCHR acknowledges that, with a mammoth legislative task on hand, such a clause may be useful in terms of expediency, we also believe that such powers could be extremely dangerous. David Davis suggested, when giving evidence to the Exiting the European Union Committee in December 2016, that the intended purpose of including a Henry VIII clause in the Great Repeal Bill will be to deal efficiently with a large quantity of legislation that will be "quite technical",⁴ in other words, the clause will be used to iron out minor details unworthy of debate. However, as Jack Simson Caird points out in his briefing paper, 'Legislating for Brexit: The Great Repeal Bill', "it is not yet known whether the powers will be specifically limited to such a purpose" and "it might prove difficult to define what counts as a 'technical' change".⁵

LCHR believes that it would be a dangerous step to include a wide-reaching clause that hands so much unchecked power to Government without any restrictions. Such an act would both undermine the sovereignty of Parliament and put fundamental rights at risk. Therefore, we share Labour's opposition to the Henry VIII clause in principle. We also recommend that if such a clause becomes inevitable, it should be heavily restricted in scope so it does not apply to human rights and workers' rights legislation, and similarly sensitive areas.

The Court of Justice of the European Union (CJEU)

As it stands, the Court of Justice of the European Union (CJEU) has the power to intervene should our government be out of step with EU law. It has jurisdiction over the implementation of human rights and workers' rights legislation such as the Equality Act, the Data Protection Act and the Working Time Directive. When we leave the EU, the CJEU will no longer have any power over our government. And crucially, gains that have been made through precedents set in CJEU case law will be lost. This includes a December 2016 ruling by the CJEU against aspects of the Government's Data Retention and Investigatory Powers Act, which established mass surveillance to be incompatible with UK law. It also includes a September 2015 ruling that mobile workers be paid for travelling to and from work.

⁴ 'Exiting the European Union Oral Evidence: The UK's negotiating objectives for its withdrawal from the EU, HC 815', 14 December 2016. <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/exiting-the-european-union-committee/the-uks-negotiating-objectives-for-its-withdrawal-from-the-eu/oral/44457.pdf>

⁵ Jack Simson Caird, 'Legislating for Brexit: The Great Repeal Bill', 23rd February 2017. researchbriefings.files.parliament.uk/documents/CBP-7793/CBP-7793.pdf.

Conclusion and recommendations

While negotiating Britain's withdrawal from the EU, there is a risk the Government could take the opportunity to curtail human rights and workers' rights protections in the UK. LCHR is particularly concerned about the inclusion of Henry VIII powers in the Great Repeal Bill. We therefore recommend that Labour continue to push for the removal of such powers, or at least ensure they are restricted to non-controversial areas and cannot be used to alter human rights and workers' rights protections, or similarly sensitive areas. More broadly, we recommend Labour continue to insist that the Government retain all the human rights and workers' rights protections currently derived from EU law, including gains made through CJEU case law.