



**The Government's human rights priorities in light of  
Brexit**

**House of Lords**

**Question for Short Debate**

**Tuesday 12 December 2017, approx. 6pm**

**Briefing for Peers**

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## Executive Summary

This briefing highlights a number of areas which the Commission urges peers to question the Government over its human rights priorities in light of Brexit. It is also an opportunity to question the Government's recent record on human rights obligations.

There are five areas the Commission recommends peers highlight in the debate, which are outlined in further detail within the briefing. These are:

- Urging the Government to establish a National Action Plan on Human Rights, including giving an enhanced status for UN treaties for example the UN Convention on the Rights of Persons with Disabilities, and ratifying the Istanbul Convention on Violence against Women;
- Highlighting the Commission's five point plan on EU (Withdrawal) Bill that includes retaining our fundamental rights and legal framework, and ensuring the UK remains a global leader on equality and human rights once we have left the EU;
- Pressing the Government to undertake an equality impact assessment of new arrangements to replace EU funding, for example the impact Brexit will have on disabled people, older people and carers, or services available to groups vulnerable to violence, including children, women and lesbian, gay, bisexual and transgender people;
- Highlighting the need for government to undertake a cumulative impact assessment of the 2018 Budget, and reconsider existing policies that are contributing to negative financial impacts for those who are most disadvantaged; and
- Urging the Government to follow up its Race Disparity Audit with genuine action, for example taking forward the Commission's recommendations in our Road Map to Race Equality, as well responding with innovative options to the Lammy review.

## Introduction

This is a briefing for a House of Lords debate on the question ‘**What are the Government’s human rights priorities in the light of Brexit?**’ on 12 December.<sup>1</sup> The debate provides an opportunity for peers to:

- mark Human Rights Day by focusing on human rights in the UK;
- scrutinise the Government’s human rights record – in particular the recommendations of the Universal Periodic Review (UPR); and
- consider human rights issues arising from Brexit, in particular the steps needed to ensure that Britain remains a world leader in equality and human rights.

## Background

Human Rights Day is observed internationally every year on 10 December, the anniversary of the adoption by the UN General Assembly of the Universal Declaration of Human Rights. See <http://www.un.org/en/events/humanrightsday/>.

The UPR is a peer-review process set up by the UN Human Rights Council in 2006, in which the human rights situation in every country is assessed every five years by its fellow UN member states. The UK was reviewed in May 2017, and received 227 recommendations. In September, the UK Government gave its official response, in which it supported 96 of those recommendations (42%).<sup>2</sup> This is significantly lower than the global average acceptance rate of 73%, and a decline from the UK’s previous UPR when the UK supported 54% of recommendations.<sup>3</sup>

### The country we want to see

Britain has a strong record in promoting international human rights, particularly through its leading role in establishing the post-war, international human rights framework. However, the UK Government’s continued refusal to fully incorporate the UN treaties it has signed shows scant regard for its international commitments.

The Commission is disappointed by the lack of leadership on human rights across Government, and would like to see greater engagement with UN accountability mechanisms from now on.

### Legislative framework

At this moment of significant constitutional change, it is important to set out a positive vision of the kind of country we want to be after we have left the EU. The Commission believes that vision must include retaining our fundamental rights and legal framework, and ensuring the UK remains a global leader on equality and

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<sup>1</sup> Please see <https://calendar.parliament.uk/calendar/Lords/All/2017/12/12/Daily> for more details.

<sup>2</sup> The remaining recommendations were ‘noted’. The term ‘supported’ as described by the UK Government means that, in its view, ‘it has either fully implemented them or intends to do so’. ‘Noted’ means the Government may have taken some steps ‘but is not fully implementing them’.

<sup>3</sup> The Commission’s page on UPR is at <https://www.equalityhumanrights.com/en/our-human-rights-work/universal-periodic-review>. Full documentation relating to the UN process can be found at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBIndex.aspx>. Figures on acceptance rates are from <http://www.universal-rights.org/blog/by-invitation/states-racing-top-third-cycle-upr-view-uks-equality-human-rights-commission/>.

human rights once we have left the EU. Respect for parliamentary sovereignty is the golden thread that runs through our advice to Government and Parliament. The Commission has set out a five-point approach to the EU (Withdrawal) Bill,<sup>4</sup> which covers retaining the Charter of Fundamental Rights (the Charter),<sup>5</sup> restricting the use of delegated powers; setting out a principle of non-regression; establishing a new domestic right to equality; and keeping pace with relevant EU case law.

Separately from the Brexit process, we welcome assurances that the Government will not amend or repeal the Human Rights Act (HRA), or alter the UK's relationship with the European Convention on Human Rights (ECHR) during the Article 50 period. We consider that the HRA, and the ECHR on which it is based, are well-crafted to provide essential protections while retaining compatibility with the UK's constitutional traditions including the principle of parliamentary sovereignty. The UPR included recommendations from 13 different states around retaining the HRA or ensuring that any new British Bill of Rights maintains the same level of protections.

## **Examples from UPR and Brexit**

The UPR recommended that the UK Government establish a national action plan on human rights to implement UN recommendations, which the Government stated it has no plans to do. The Commission is working to develop a tool for tracking and reporting on progress made in implementing recommendations from the UPR and other UN human rights processes.

The following examples briefly illustrate a few of the many specific and complex issues highlighted by the UPR and Brexit processes, and reinforce the arguments for stronger legislative and institutional protections.

### **Children's rights**

The EU Charter provides rights for children which are not replicated elsewhere in justiciable UK-wide human rights law.<sup>6</sup> The UPR included recommendations to enhance the status of the Convention on the Rights of the Child (CRC) in domestic law, which the Government should consider as a way of mitigating any potential reduction in protections arising from Brexit.<sup>7</sup>

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<sup>4</sup> Equality and Human Rights Commission, EU (Withdrawal) Bill House of Commons Second Reading 7 September 2017, available at: <https://www.equalityhumanrights.com/sites/default/files/briefing-eu-withdrawal-bill-second-reading.pdf>

<sup>5</sup> The Government has just (5 December) published its analysis of the effect on fundamental rights of the EU (Withdrawal) Bill. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/664891/05122017\\_Charter\\_Analysis\\_FINAL\\_VERSION.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/664891/05122017_Charter_Analysis_FINAL_VERSION.pdf). At the time of writing this briefing, it had not yet been possible to assess the extent to which this document addresses our concerns about the potential reduction in substantive rights and access to legal redress which might result from the Government's plan not to retain the Charter.

<sup>6</sup> For example, the Charter requires that the child's best interests must be a primary consideration in all actions relating to children, that children's views may be expressed and shall be taken into consideration, and that children have a right to maintain a personal relationship with both their parents unless contrary to their interests.

<sup>7</sup> Such measures have been taken in Scotland and Wales but do not yet apply in England: Part 1 of the Children and Young People (Scotland) Act 2014 (2014 Act) places duties on Scottish Ministers to take steps to secure better or further effect of the CRC; the Rights of Children and Young Persons (Wales) Measure 2011 places a duty on Welsh Ministers to have due regard to the CRC when exercising their functions.

The UPR also included a recommendation to increase efforts to eradicate child poverty and assess the cumulative impact of welfare reform on children from disadvantaged families. However, the UK Government did not support that recommendation, stating that 'Due to methodological and modelling limitations, the Government does not publish such cumulative analysis for protected characteristics'. The Commission has shown that it is possible to carry out a cumulative impact assessment and has called on the Government to conduct one ahead of the 2018 budget, and reconsider existing policies that are contributing to negative financial impacts for those who are most disadvantaged.<sup>8</sup>

## **Disability rights**

EU law is an important vehicle through which disabled people's rights are given effect in member states' legal systems, as the EU is itself a signatory to the Convention on the Rights of Persons with Disabilities (CRPD)<sup>9</sup>. To ensure there is no regression, and to ensure disabled people in Britain benefit from future progress driven by the CRPD, the UK Government should take steps to ensure these protections are incorporated into UK law, for example by giving enhanced status to the CRPD.

A further concern is that many disabled people employ skilled Support Workers or Personal Assistants who are nationals of other EU countries. It is vital to consider the impact of the loss of the EU workforce on disabled people's ability to live independent lives.<sup>10</sup> The Government should also address the potential impact on disabled people of the loss of EU structural funding: e.g. the European Social Fund's priority groups include disability, mental health, older people and carers.

## **Race equality**

The need to address race discrimination featured prominently in the UPR. A significant number of UPR recommendations covered racial intolerance and hate crime, and noted the spike in hate crime following the EU referendum. The Government's Race Disparity Audit found widespread evidence of race inequalities in all areas of life, including the criminal justice system where Black people continue to be six times more likely to be stopped by the police. The Commission's 'Roadmap to race equality'<sup>11</sup> proposes priorities for the Government, including action to understand why disproportionate numbers of ethnic minorities enter the criminal justice system. As the Government prepares its response to the Lammy Review, we would urge it to consider the need to develop innovative options to address the differential representation and treatment of ethnic minorities in prisons, including improvements to the quality of needs assessments and complaint mechanisms.

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<sup>8</sup> Equality and Human Rights Commission, Impact of tax and welfare reforms between 2010 and 2017: interim report, 17 November 2017, available at: <https://www.equalityhumanrights.com/en/publication-download/impact-tax-and-welfare-reforms-between-2010-and-2017-interim-report>

<sup>9</sup> For further detail on this point see UKIM (2017) Disability Rights in the UK: UK Independent Mechanism submission to the CRPD Committee, para 10. Available [here](#) [accessed: 6 December 2017].

<sup>10</sup> Lawson. A and Sayce L. (June 2017) The implications of Brexit for disability rights: Influencing future debate and policy, pp 9-10. Available [here](#).

<sup>11</sup> <https://www.equalityhumanrights.com/en/publication-download/roadmap-race-equality>

## Women's rights

2018/19 will see the examination of the UK Government's record against the requirements of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). We urge the Government to maintain momentum towards ratifying the Istanbul Convention<sup>12</sup>, which was the subject of six UPR recommendations, by making the necessary law, policy and practice changes, and to dedicate sufficient resources to ensure its effective implementation.

There are concerns about the potential impact of the loss of EU cooperation and funding on the UK's equality and human rights infrastructure. For example, the EU's Rights Equality and Citizenship Fund includes objectives to promote equality between women and men and prevent violence against children, women and other groups at risk, such as LGBTI people.<sup>13</sup> The Government must prevent non-regression through ensuring new funding arrangements, such as the UK Shared Prosperity Fund, are informed by a robust equality impact assessment so that they can be targeted on addressing entrenched inequality and disadvantage.

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<sup>12</sup> The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence.

<sup>13</sup> 'Rights, Equality and Citizenship programme 2014-2020'. [http://ec.europa.eu/justice/grants1/programmes-2014-2020/rec/index\\_en.htm](http://ec.europa.eu/justice/grants1/programmes-2014-2020/rec/index_en.htm). The total budget for the programme is €439 million. Funding mapping carried out by the Equality and Diversity Forum shows that since 2014, out of 140 projects funded by the REC programme, just over a third had a UK lead or partner.