



House of Commons  
Women and Equalities  
Committee

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**Ensuring strong  
equalities legislation  
after the EU exit**

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**Seventh Report of Session 2016–17**

*Report, together with formal minutes  
relating to the report*

*Ordered by the House of Commons  
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## The Women and Equalities Committee

The Women and Equalities Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Government Equalities Office (GEO).

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[Lucy Allan MP](#) (*Conservative, Telford*)

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Committee reports are published on the Committee's website at [www.parliament.uk/womenandequalities](http://www.parliament.uk/womenandequalities) and in print by Order of the House.

Evidence relating to this report is published on the [inquiry page](#) of the Committee's website.

### Committee staff

The current staff of the Committee are Judith Boyce (Clerk), Sharmini Selvarajah (Second Clerk), Tansy Hutchinson (Committee Specialist), Holly Dustin (Committee Specialist), Shai Jacobs (Committee Specialist), Asaad Qadri (Inquiry Manager), Aaron Huang (Inquiry Manager), Alexandra Hunter-Wainwright (Senior Committee Assistant), Mandy Sullivan (Committee Assistant), and Liz Parratt (Media Officer).

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## Summary

Since the referendum on membership of the EU in June 2016, the Government has been planning how to proceed with ensuring the best deal for the UK. One of the commitments that the Government has made is to ensure that the same laws and rules apply after the UK is no longer a member of the EU as before it leaves. The Government has specifically mentioned that general rights should be protected and maintained and that there should be no regression in the rights of workers.

We conclude that ensuring that equality protections are maintained is not simply a matter of transposing existing EU law. In order to protect rights, the Government needs to take active steps to embed equality into domestic law and policy. The steps we recommend would entrench equality into the UK legal and policy framework and would ensure that the UK retains a strong, undiminished record of equality after it leaves the EU.

A summary of our main recommendations is outlined here:

- (1) The Government should bring forward an amendment to the Equality Act 2010 to empower Parliament and the courts to declare whether legislation is compatible with UK principles of equality.
- (2) The Government should include a clause in the Great Repeal Bill that explicitly commits to maintaining the current levels of equality protection when EU law is transposed into UK law.
- (3) The Government should develop a cross-government equality strategy in order to ensure engagement across government departments and provide a platform for linking with and drawing on the expertise of civil society organisations.
- (4) The Government should assess the extent of research and other equality initiatives that currently receive EU funds and replace and ring-fence these funds to allow current equalities research to continue uninterrupted.

# 1 The Government's policy and our inquiry

1. Equality is a fundamental tenet of modern British values and identity. Accordingly, the UK has a strong track record in developing equality protections in law. During the UK's membership of the EU, EU equality legislation has often come about through existing UK law and the UK leading the way. Professor Sandra Fredman of the Oxford Human Rights Hub told us that:

there is an excellent record from Parliament on equalities legislation. [ ... ] we should also say that much of the EU law that we have received and incorporated is also our law, because we have participated in the input to it.<sup>1</sup>

2. However, while the EU has been responsible for setting minimum standards in many areas of law, in equalities the UK has also gone beyond the required minimum in some areas. Dr Panos Kapotas and Dr James Hand of the University of Portsmouth gave some examples:

The 2003 expansion of protected characteristics to cover sexual orientation and religion or belief (and the extension to age three years later) was the result of European law. However, the extension to cover goods and services saw British law precede the EU (as was also the case with regard to disability protection and the wider definition of race).<sup>2</sup>

3. The UK's strong record was reflected in the comments of the Minister for Women and Equalities in evidence to us in January 2017. Invited to speak about the issues being considered by the Government Equalities Office in relation to leaving the EU, the Minister told us that:

our existing legal basis for looking at and maintaining equality in the UK is strong. We should be proud of it, but we will play a role through those Brexit negotiations to make sure that that is absolutely maintained post the exit from the EU. [ ... ] we already have our strong equalities legislation in place. Therefore, our leaving the European Union does not affect that per se.<sup>3</sup>

4. In October 2016, the Government announced plans to introduce a Great Repeal Bill, which will be the legislation required to repeal the European Communities Act 1972 and formally sever the ties between the EU and the UK. The second proposed function of the Bill is:

[to] preserve EU law where it stands at the moment before we leave the EU. Parliament (and, where appropriate, the devolved legislatures) will then be able to decide which elements of that law to keep, amend or repeal once we have left the EU. The UK courts will then apply those decisions of Parliament and the devolved legislatures.<sup>4</sup>

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1 Q2

2 Dr James Hand and Dr Panos Kapotas ([OEU0010](#)) para 5

3 Oral evidence taken on 18 January 2017, [HC \(2016–17\) 933](#), Q10

4 UK Government, [The United Kingdom's Exit from and New Partnership with the European Union](#) (February 2017) p 10

5. Few details about the Bill are currently available, but the Government has made it clear that it intends to maintain the status quo and ensure that as little as possible changes at the point of leaving the EU. The Government's White Paper, *The United Kingdom's exit from and new relationship with the European Union*, explains that:

wherever practical and appropriate, the same rules and laws will apply on the day after we leave the EU as they did before. This approach will preserve the rights and obligations that already exist in the UK under EU law and provide a secure basis for future changes to our domestic law. This [ ... ] provides fairness to individuals whose rights and obligations will not be subject to sudden change.<sup>5</sup>

6. The Government has emphasised in particular its intention to ensure the continued protection of workers' rights. The White Paper states:

The Great Repeal Bill will maintain the protections and standards that benefit workers. Moreover, this Government has committed not only to safeguard the rights of workers set out in European legislation, but to enhance them.<sup>6</sup>

The White Paper further states that the Government is committed to strengthening workers' rights "when it is the right choice for UK workers and will continue to seek out opportunities to enhance protections."<sup>7</sup>

7. Despite these clearly expressed intentions, however, evidence to our inquiry suggests that ensuring and developing equality and workers' rights as ministers want is more complex than simply transposing law. The way legal and administrative structures within which UK equality protections currently operate and develop will change when the UK leaves the EU and this also needs to be tackled. Since the UK entered the European Economic Community (now the EU) in 1973, EU and UK equality law and policy development have become deeply interdependent. EU mechanisms have been influenced by UK law whilst also playing an important role in developing and strengthening equality protection in the UK.

8. The work of the Court of Justice of the EU (CJEU) has been particularly important in providing, in effect, an absolute backstop for equalities. It is the final court of appeal for EU-related cases. National courts are obliged to give effect to its judgments and to disapply any national laws that conflict with EU law as interpreted by the Court. The Government has emphasised that:

We are not leaving the European Union only to return to the jurisdiction of the European Court of Justice. [ ... ] the Equality Act 2010 incorporates relevant existing CJEU judgments and Government will continue to monitor such judgments being made by the European Court for any implications these may have for the Act until the point when EU law ceases to apply.<sup>8</sup>

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5 UK Government, [The United Kingdom's Exit from and New Partnership with the European Union](#) (February 2017) p 9

6 UK Government, [The United Kingdom's Exit from and New Partnership with the European Union](#) (February 2017) p 31

7 UK Government, [The United Kingdom's Exit from and New Partnership with the European Union](#) (February 2017) p 32

8 UK Government ([OEU0026](#))

Leaving the jurisdiction of the Court of Justice of the EU (CJEU) makes it all the more important that the UK's own domestic equality laws are as strong as they can possibly be. Final responsibility for interpreting these laws will be brought back to UK courts. This issue is discussed further in Chapter 2.

9. The two-way relationship between the UK and the EU has been evident in policy as well as law. Evidence to our inquiry acknowledged that the origins of equal pay, for instance, are largely attributable to UK campaigners, but the key concepts underpinning the law were broadened and developed in the EU and internationally.<sup>9</sup> Professor Fredman commented:

Although we did have equal pay, the concept of equal work for equal value came in through EU law, which is also an international standard through the International Labour Organisation. Protection for part-time workers has come from EU law, but again it is something that the UK participated in strongly, because protection for part-time workers came out of what has been called social dialogue, which was an agreement between European trade unions and the European employers' associations.<sup>10</sup>

10. The evidence we received throughout this inquiry reinforces the message that, as far as equalities law and policies are concerned, the UK has had a strong record, and often EU legislation has come about as a result of UK leadership. Because of its structures, the EU has become the source of absolute equality protection in the UK.

11. There are a number of examples of this interdependency. Pregnant women in the UK have benefitted in a range of ways from how partnership working has developed between the UK and EU on maternity and parental rights. It is as a result of EU law that pregnant women are entitled to paid time off work for ante-natal appointments and are protected from being dismissed as a result of pregnancy. Disabled people have also benefitted from the UK's membership of the EU, for example, they must be given assistance at airports. It is protections such as these that the UK will want to continue to enhance and develop once the UK leaves the EU.

12. This blending of EU and UK protections has led our witnesses to recommend that the process of decoupling domestic legislation is complex and needs to be done carefully in order to ensure that there is no unintentional regression in rights, protections or policy development. We received and have reflected on many suggestions on how the Government can ensure that equality protections are maintained after leaving the EU.

13. **It is clear that the Government's policy intention is that there should be no erosion of the UK's equalities protections at the point of leaving the European Union. Our aim in conducting this inquiry has been to ensure that the goal of no erosion of rights and protections is attained.** Where potential pitfalls have been identified, we have sought to suggest remedies.

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9 See also Q40 [Professor Walby]

10 Q2



## About our inquiry

14. We launched our inquiry on 14 October 2016. We had held a one-off evidence session in September 2016 where we heard from Professor Aileen McColgan and Professor Catherine Barnard, academics in the fields of equality and European law. That session highlighted the need for further evidence on the potential effects of leaving the EU on equalities policy and law in the UK.

15. We held two further oral evidence sessions. In the first session we heard from witnesses about the legal framework for equalities once the UK is outside the EU. In the second, we heard from witnesses about the role of civil society in policy development on equalities during the negotiations for leaving the EU and once the UK is outside the EU, as well as funding for and research on equalities. We also heard from the Equality and Human Rights Commission about its role in protecting equalities and its recommendations to Government in respect of this. We then questioned the Minister for Women and Equalities, Rt Hon Justine Greening MP, in the course of a general evidence session in January 2017. Finally, we have received 44 written submissions from individuals, grassroots organisations, charities, legal experts and universities.

16. The scope of the inquiry has been necessarily narrow to avoid duplication with the work of other Parliamentary bodies. The Joint Committee on Human Rights, for example, published a report in December 2016 looking at the human rights implications of leaving the EU.<sup>11</sup> Our report focuses largely on legal protections, rather than equality policy more broadly, and also does not deal with issues of devolved administration, for example issues specific to Northern Ireland.

17. We would like to thank our specialist advisers, Professor Colm O’Cinneide<sup>12</sup> and Sheila Rogers<sup>13</sup> for their invaluable support and advice throughout the inquiry. We would also like to thank all those who gave oral and written evidence, and especially witnesses in the first oral evidence session, Karon Monaghan QC and Professor Sandra Fredman QC, who provided further assistance and ideas after giving evidence.

18. This report provides an initial consideration of some of the options and opportunities that may arise during the process of leaving the EU. We intend to continue to monitor and contribute to the process as it unfolds. The next chapter gives an overview of how the UK and EU systems of equalities protections interact, with a focus on law, other international mechanisms that shape the equalities landscape, where gaps might emerge as a result of leaving the EU, and some possible ways of responding to those gaps. Chapters 3 and 4 consider some of the implications for civil society, policy-making, research and funding.

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11 Joint Committee on Human Rights, Fifth Report of Session 2016–17, The rights implications of Brexit, [HC 695/HL Paper 88](#)

12 No relevant interests declared

13 No relevant interests declared

## 2 Retaining the UK's strong legal equalities protections after exiting the EU

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### The UK's relationship with the EU and other international institutions in relation to equalities

19. Most current equality law in the UK comes from three sources of law:
- a) domestic law: parliamentary legislation and case law from UK courts. The Equality Act 2010 is the most comprehensive UK-based law dealing with equality;
  - b) EU law: as legislation of the Council of the EU and the EU Parliament and case law of the Court of Justice of the EU (CJEU); and
  - c) agreements made between members of the Council of Europe, in particular case law from the European Court of Human Rights hearing individual claims based on the European Convention on Human Rights (ECHR).

The UK's membership of the Council of Europe will not be affected by leaving the EU; this means that the rights enshrined in the ECHR, as incorporated in the Human Rights Act 1998, will continue to have effect in the UK. In this respect, nothing will change.

### *International treaties and agreements*

20. The UK is a signatory to a number of international treaties and agreements that impact on equalities, including the Sustainable Development Goals, the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the Convention on the Rights of Persons with Disabilities (CRPD). The UK's obligations under these will not change as a result of leaving the EU. These treaties are binding in international law, but do not take direct effect in domestic law in the same way as EU law. Professor Sandra Fredman of the Oxford Human Rights Hub outlined the limited effect of many international treaties:

International law differs from EU law in that the way it works in this country, and in lots of countries actually, is that the UK is bound at an international level by its international obligations but it does not become part of domestic law until Parliament passes a statute, which then makes it binding in domestic law [ ... ]. That means that compliance with the Convention on the Elimination of all Forms of Discrimination against Women—CEDAW—or the race convention, disability convention and so on are really things that the state has to show other states that it has complied with. It is very difficult for individuals in the country itself to go to court or anywhere and say, “My right under this international convention has been breached.”<sup>14</sup>

21. Evidence to our inquiry suggested that, as the UK prepares to leave the EU and seeks to establish new relationships outside it, there will be a need to continue to look beyond the UK's borders to international equality agreements which—despite their legal limitations—can help the UK hold itself to the highest standards.

### *The UK's relationship with the EU on equality law*

22. Domestic and EU equality law have had a symbiotic history since the UK became an EU member.<sup>15</sup> In some cases, UK law preceded EU law and the UK was seen as leading the way for future EU legislation, whereas, in some cases, EU law has had to be incorporated into UK law in various ways.

23. Some EU law arrives into UK law through directly applicable legislation. This includes the EU Treaties that apply directly to the UK by virtue of the European Communities Act 1972 (ECA1972) and also the European Charter of Fundamental Rights, which is discussed in more detail below. Various regulations also apply directly to the UK, but few of these relate directly to equality and non-discrimination. Some of those that do are discussed below.

24. After leaving the EU, these laws will either need to be transposed into UK law through the Great Repeal Bill—or some other mechanism—or they will simply fall away and will no longer have any application in the UK.

25. A second way in which EU law becomes UK law is through directives. Directives do not automatically apply in the UK, but rather have to be implemented either through primary or secondary UK legislation. The Equality Act 2010 is primary legislation which gives effect in UK law to the provisions of a number of different EU directives. As an example, the Equality and Diversity Forum stated:

The UK introduced provisions to outlaw discrimination in employment on the grounds of age (above 18 years) as a direct result of the EU Employment Equality Directive 2000/78/EC. This has meant that rigid upper age limits for recruitment into the fire service, the police service or for airline pilots are not permissible unless they can be shown to be justifiable, however, checks on physical ability are permissible.<sup>16</sup>

26. It is more common for directives to be given effect in UK law through secondary legislation made by government in the form of UK regulations, such as the Maternity and Parental Leave Regulations 1999 and Working Time Regulations 1999. The mechanism that gives the government the power to create such regulations also stems from the European Communities Act 1972. The UK will need to consider what regard it gives to new EU directives after leaving the EU.

27. Finally, EU law has effect in the UK through case law of the Court of Justice of the European Union (CJEU). The CJEU is the court that has the final say over how EU law is interpreted. For instance, if an individual believed that they were being discriminated against because a section of the Equality Act 2010 did not truly reflect the Directive that was the source of that act, that person could take a claim against the UK Government on those grounds to the CJEU.

15 *Brexit: Employment Law*, Commons Briefing Paper [CBP7732](#), House of Commons Library, November 2016

16 Equality and Diversity Forum [\(OEU0035\)](#) Annex 1

28. The decisions of the CJEU are binding upon the UK, meaning that the Court currently has the power to compel UK courts to set aside domestic legislation and case law. Some high-profile UK equality law has started as a judgment made by the CJEU, including the concept of discrimination by association,<sup>17</sup> the inclusion of transgender people within sex discrimination<sup>18</sup> and the removal of the upper limit for compensation for tribunal cases based on discrimination grounds.<sup>19</sup> Due to such judgments, changes were made to UK law to comply with the decision made by the CJEU. Worth noting, however, is that, in general, UK courts must make a reference to the CJEU before the Court can get involved with a case. The EU Commission can also bring enforcement proceedings against a state for failing to implement EU law.

29. After the UK leaves the EU, the CJEU will no longer have jurisdiction to resolve matters of EU law as it relates to the UK. The final court of appeal for matters of equality will be the UK Supreme Court.

### Gaps in equality protection that may arise as a result of leaving the EU

30. Many of our witnesses concurred with the Government that the UK has a strong record on equalities in policy and law. Many also noted that, once the UK has left the jurisdiction of the EU, there will inevitably be a divergence between EU law and UK law.<sup>20</sup>

**31. At present, domestic legislation and EU legal structures together provide the UK's strong equality protections. Stakeholders have expressed concern that the removal of the EU legal underpinning, including the court system, will lead to a weakening of equality protection in the future unless its full effects are understood. It is therefore important for the Government, during the process of leaving the EU, to ensure that robust equality protection is embedded at each milestone. The Government should ensure that equality protections—including but not limited to workers' rights—remain to the fore as negotiations begin and throughout the leaving process. We intend to keep an active interest in these issues as the process moves forward.**

32. Specific potential gaps in future equalities protection have been identified by the evidence we have received. The rest of this chapter will deal with these and with the suggested solutions to ensure that the Government achieves its objective of equalities protection in the UK remaining as strong after leaving the EU as before. The principal issues are:

- The role of the Charter of Fundamental Rights;
- The function of the Court of Justice of the EU;
- The status of existing and future Court of Justice of the EU case law;
- EU legislation not yet in UK law; and
- The EU's free-standing equality commitments.

17 *Coleman v Attridge Law*, 2008, [C-303/06](#)

18 *P v. S and Cornwall County Council*, 1996, [C-13/94](#)

19 *Marshall v Southampton and South West Hampshire AHA*, 1986, [C-152/84](#)

20 *Employment Lawyers Association* ([OEU0018](#)) para 25

### **The Charter of Fundamental Rights**

33. The Charter of Fundamental Rights (the Charter) was introduced into EU law as a consolidation document to clarify what human rights are protected by law within the EU legal system. Its provisions draw on the European Convention on Human Rights, the case-law of the CJEU and a number of other relevant legal sources. The Charter lists a number of fundamental rights, which must be respected by the EU institutions as well as the member states when they are implementing EU law. Article 21 of the Charter, for instance, is the “anti-discrimination” article, which prohibits discrimination on a number of different grounds.

34. There are mixed views on the effectiveness of the Charter, even while the UK is still a member of the EU. Some have argued that it will “contribute significantly to the discovery of general principles”.<sup>21</sup> A number of submissions were of the view that there were substantive rights conferred by the Charter that would be lost to UK residents after leaving the EU. Rape Crisis England and Wales referred to Article 21,<sup>22</sup> and UNISON to articles relating to non-discrimination on the grounds of social origin, genetic feature, language and property, groups that are not currently covered in UK law.<sup>23</sup>

35. However, the European Scrutiny Committee reported in 2014 that the Charter does not include any new rights that cannot be traced back to other sources of EU law.<sup>24</sup>

36. The Charter only applies to EU law or national law that has its origin in EU law, which creates some difficulty in trying to apply it outside of an EU context. As Professor Juss noted in oral evidence:

[ ... ] the obligation to apply the Charter only makes itself felt upon national parties and EU institutions when EU law is an issue and is being implemented. Once you take away EU law, the Charter falls.<sup>25</sup>

On the assumption that retaining the Charter wholesale in the UK would therefore not be a practicable option, Professor Sandra Fredman suggested that “there are aspects of the content of the Charter that would be useful for us to retain and domesticate as our own”.<sup>26</sup>

37. Professor Fredman argued that parts of the Charter do endow individuals with rights that are unavailable to them in UK law, due to the breadth of its scope. She gave the example of the protected characteristics contained within the Charter. In the Charter, the list of protected groups is open-ended and non-exhaustive,<sup>27</sup> whereas UK law has a closed list of nine protected characteristics:

Under both the European Convention and the Charter, you can develop the grounds, or what we now call protected characteristics, to include new things [ ... ] at the moment, if you want to include a new protected

21 Koen Lenaerts, Jose A. Gutiérrez-Fons, ‘The constitutional allocation of powers and general principles of EU law’ (2010) 47 *Common Market Law Review*, Issue 6, pp. 1629–1669

22 Rape Crisis England and Wales ([OEU0031](#)) para 10

23 UNISON ([OEU0019](#)) para 22

24 European Scrutiny Committee, Forty Third Report of Session 2013–14, [The Application of the EU Charter of Fundamental Rights in the UK: a state of confusion](#), HC 979, para 150

25 Q8

26 Q10

27 Including characteristics such as class, caste and background

characteristic [in UK law], you have to get a parliamentary amendment, whereas if it is more open-ended it can go through the courts and it can be more responsive to social developments.<sup>28</sup>

38. We agree that it would be difficult to apply the Charter so that it would function in a domestic context alone. Care needs to be taken to ensure that the principle of parliamentary sovereignty is protected whilst ensuring that the Government's objective of protecting equalities is met.

### **The function of the Court of Justice of the EU**

39. The Court of Justice of the EU (CJEU) is the final court of appeal in cases where there is perceived to be a breach of EU law or EU-derived law. The CJEU has been instrumental in interpreting EU equality law, and its judgments have sometimes extended the scope of equality protection in the UK. National courts are obliged to give effect to judgments of the CJEU and to disapply any national laws that conflict with the requirements of EU law. This means that the case-law of the CJEU has extended equality protections in UK law without having to be approved by the UK Parliament.

#### **Box 1: How Court of Justice of the EU judgments can cause changes in UK legislation—transgender people covered under the Sex Discrimination Act 1975**

The case of *P v S and Cornwall County Council*<sup>29</sup> related to a situation in which a transgender woman was dismissed from her job because she was transitioning. The employment tribunal in the UK decided that it was unclear whether the Sex Discrimination Act, as originally drafted, was in breach of the EU's Equal Treatment Directive<sup>30</sup>, by excluding gender reassignment as part of the Act. The tribunal in the UK made a reference to the CJEU to ask whether the Directive applied in the case of transgender people; if that was the case, the Sex Discrimination Act would need to be amended. The CJEU ruled that under the Equal Treatment Directive, trans women were protected. As a consequence, the UK was obliged to change the law through the Sex Discrimination (Gender Reassignment) Regulations 1999.

40. After leaving the EU, individuals will not be able to have their equality cases referred to the CJEU. The UK courts will no longer be able to disapply law found to be incompatible with EU equality law by the CJEU. However, the UK will also lose the CJEU's function as an arbiter of incompatibility with the principles of equality. For the Government to achieve its objectives of fundamental protection for equality rights to preserve the present situation as closely as possible, it needs to take additional action.

41. Our witnesses suggested a way in which parliamentary sovereignty can be preserved while ensuring that equality principles can be upheld as robustly as possible by the UK courts. Karon Monaghan QC suggested:

You asked what we could do in terms of entrenching rights [ ... ]. We do have a model for that in the Human Rights Act. The courts are able to say,

28 Q8

29 *P v. S and Cornwall County Council*, 1996, [C-13/94](#)

30 Council Directive [76/207/EEC](#)

“This piece of legislation is incompatible with certain fundamental rights.” It still preserves parliamentary sovereignty, because the courts cannot overturn it, but they can give a statement of incompatibility that is almost always complied with. They can also require Parliament to state, when it passes legislation, as with the Human Rights Act, that it is compliant with those fundamental rights. There is a model, even within a system of parliamentary sovereignty, where those safeguards can be introduced.<sup>31</sup>

Other witnesses also agreed that such a change would make a substantive contribution to the Government’s commitment to maintain current levels of equality protection.<sup>32</sup>

**42. Leaving the EU provides an opportunity to return to Parliament its role to ensure that equalities are robustly protected. The Equality Act 2010 is the culmination of decades of development of domestic protection of equalities. An additional clause in that Act adding a function of a declaration of compatibility into the Equality Act would act as an entrenchment of these rights that were enacted by Parliament.**

*43. The Government should give strong consideration to bringing forward an amendment to the Equality Act 2010 to mirror provisions in the Human Rights Act 1998. The purpose of that amendment would be to set out that public authorities must not act in a way that contravenes the Equality Act unless required to do so by another Act of Parliament; that ministers, when presenting any Bill, must make a declaration of compatibility with the Act; that interpretation of legislation by the courts must take account of the Act and be read as far as possible to comply with its provisions; and that, if any legislation is incompatible with the Act, a declaration of incompatibility should be made by the court.*

### **The status of existing and future case law of the Court of Justice of the EU**

44. The White Paper states that the UK will no longer be bound by judgments from the CJEU, but continues:

In general the Government also believes that the preserved law should continue to be interpreted in the same way as it is at the moment. This approach is in order to ensure a coherent approach which provides continuity. It will be open to Parliament in the future to keep or change these laws.<sup>33</sup>

45. Concerns were expressed in some of the evidence we received about the status of future CJEU judgments that may be relevant to UK legislation. After leaving the EU, UK and EU law will begin to diverge if judges in the UK interpret legal concepts differently from their EU counterparts. Karon Monaghan QC, a barrister practising in discrimination law, suggested that it was, nevertheless, likely that judgments of the CJEU would still be relevant in the future:

When we do cases here, we typically ask the court to consider cases from Canada or South Africa—countries whose legal systems, social norms or

31 Q34

32 See for example, Q31 and Q36

33 UK Government, [The United Kingdom’s Exit from and New Partnership with the European Union](#) (February 2017) p 10

broad political commitments are fairly similar—because we learn from them. It is likely that there would be some drawing on the Court of Justice case law, even if we were not formally bound by it, but of course it would not have directly effective impact; it would not require our courts to comply with any judgments, but it is likely to inform them.<sup>34</sup>

46. Some of the evidence pointed towards a potential issue that may arise when existing equality principles enshrined in both EU and UK law become the subject of legal disputes after the UK leaves the EU. Dr Panos Kapotas of the University of Portsmouth, explained what might occur in the future:

The key concepts in equality and discrimination law are not static. The European Court of Justice, the CJEU, has recently delivered a judgment, *Nikolova v CEZ Electricity*, where it re-clarifies the concept of direct and indirect discrimination that we thought for quite some time were quite settled. I am not necessarily suggesting that we should continue to automatically bring such an interpretative development into the domestic legal order, but I am suggesting that taking account of that development surely cannot be a bad thing, or something that will restrain judicial authority—or parliamentary authority, for that matter.<sup>35</sup>

47. While many of the equality-related CJEU judgments of the past have now been incorporated into the Equality Act 2010, it is still important that the UK courts are enabled to arbitrate equality disputes as effectively in the future as the EU courts have done in the past. This is one of three issues which we consider could usefully be clarified in the Great Repeal Bill, as discussed from paragraph 57, below.

### ***EU legislation that has not yet been incorporated into UK law***

48. A number of submissions concerned the status of proposed EU legislative proposals which have not yet become law. Some legislation has been passed in the EU that has not yet been transposed into UK law. Other measures are making their way through the EU legislative process; these may or may not be law at EU level by the time the UK leaves the EU. The Government will need to decide how to deal with proposed EU legislation that may come into force after the triggering of Article 50 but before the day the UK leaves the EU.

49. Some submissions to our inquiry suggested that a possible solution to this problem could be that the Great Repeal Bill should make explicit that all EU legal requirements that are in force on the day that the UK leaves will be transposed into domestic law. Examples of important legislation include the draft Accessibility Act. RNIB stated:

RNIB believes that the UK Government should continue to engage with EU member states on the draft legislation, and ensure that requirements set out by the Act are incorporated into domestic legislation after Brexit.<sup>36</sup>

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34 Q11

35 Q27

36 Royal National Institute of Blind People ([OEUE0023](#)) para 2.5



50. Maternity Action gave a further example with regard to parental leave:

In November 2015 the European Commission launched a consultation on improving work life balance and removing the barriers to women's participation in the workplace. The EU is looking to strengthen leave for fathers and partners, carers, flexible work arrangements and equal treatment. It is also looking at strengthening women's protection against pregnancy and maternity-related dismissal and rights to breastfeeding breaks on return to work.<sup>37</sup>

We consider below how these matters could be dealt with through the Great Repeal Bill.

### ***The EU's free-standing commitments to equality and non-discrimination***

51. The importance and value placed on equalities can be seen throughout the EU Treaties. There is a series of articles containing free-standing commitments to equality protection and non-discrimination.<sup>38</sup> The UK has no vehicle for such a broad declaration, in part due to its lack of a codified constitution. Professor Fredman, in oral evidence, explained:

We know that equality is a fundamental principle of EU law and that has, as it were, imbued the way in which a lot of the equality provisions are interpreted at EU level, which has been to further the principle that equality is a value. The UK is unusual in not having a constitutional protection for the right to equality, which many other countries do. In some ways, the EU has performed that function.<sup>39</sup>

52. Many countries have a codified equality clause as part of their written constitutions. As most constitutions are very difficult to amend, equality as a free-standing principle is deeply embedded and protected. Dr Kapotas outlined the potential gap in protection in the UK that could emerge as a result of leaving the EU:

There is an inherent weakness in not having a codified constitution and not having a general equality or non-discrimination clause. The weakness is that when we move into uncharted territory, national courts that will have to interpret the law in 2019 or 2020, post-Brexit, may find themselves in a position where the relatively easy tool of constitutionality control is not going to be available. So in countries with written, codified constitutions, which all include an equality clause, a national court, when in doubt when interpreting the law, might have resort to the fundamental constitutional principle.<sup>40</sup>

53. The Equality Act was enshrined in law in the context of the UK being a member of the EU, with its freestanding commitment to equality and non-discrimination. Witnesses have suggested to us a number of ways of achieving the Government's objectives of protecting current equality rights by entrenching equalities in UK domestic law.

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37 Maternity Action ([OEU0011](#)) para 30

38 For example, Article 2 of the Treaty of the European Union, and Article 19 and 157 of the Treaty on the Functioning of the European Union.

39 Q6

40 Q21

54. In order to address this, some submissions suggested ratifying Protocol 12 of the European Convention on Human Rights (ECHR)—the free-standing equality clause—or adding a preamble to the Equality Act. However, we have been advised that ratifying Protocol 12 would not add much in the way of protection from regression. Professor Fredman explained in oral evidence that the ECHR is limited in its scope:

The European Convention only applies to the state; it does not apply to private bodies. In the whole field of employment, which is about the relationship of employers to workers, the European Convention is quite limited unless you get further legislation that says that the right to equality applies in the employment field [ ... ]. This means that, at least at this level, EU law and the Equality Act are far superior.<sup>41</sup>

55. Another suggestion has been that there could be a preamble added to the Equality Act to create a free-standing equality commitment in British law. This was put to us by the Oxford Human Rights Hub which suggested that

A preamble or purpose clause should be included in the [Equality Act 2010] stating the values which should guide interpretation to avoid overly narrow reading of the statute. An example of best practice would be the preamble to the Ontario Human Rights Code.<sup>42</sup>

However, such a preamble would not serve to create an enforceable right similar to that enjoyed by individuals under EU law.

56. The final suggestion made by witnesses was for there to be an explicit commitment to non-regression on equalities in the Great Repeal Bill. Karon Monaghan QC suggested:

What you could do very simply is include what we call a non-regression clause [into the Great Repeal Bill]. In other words, nothing that we already have slips through the net. You have a very simple clause in the Bill that says, “In relation to the areas of equality and non-discrimination, nothing set out in this Act will reduce the protection already provided by domestic law”. It could be something of that sort.<sup>43</sup>

### ***The Great Repeal Bill***

57. In our view there are a number of areas in which it would be desirable for an overarching commitment to equality principles and clarification of specific points to be set out in UK law.

**58. The Great Repeal Bill will be a significant opportunity for the Government to achieve its objective of maintaining existing equality protections at the point of leaving the EU, and to turn its policy intentions into legislative commitments.**

**59. The Government should include a clause in the Great Repeal Bill that explicitly commits to maintaining the current levels of equalities protection when EU law is**

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41 Q16

42 Oxford Human Rights Hub ([OEU0008](#)) para 18

43 Q28

*transposed into UK law. A number of different ways of drafting such a clause have been suggested to us, which we invite the Government to consider and comment on.* These can be found in the annex to this report.

60. **The status in the UK of future EU case law is currently unclear. While the Government has been clear that existing case law will be transposed through the Great Repeal Bill, it has not provided such clarity for future case law. We therefore recommend that the proposed status of future Court of Justice of the EU case law be clarified and legislated for in the Great Repeal Bill.**

61. **The Government's White Paper has stated that all existing legislation will be transposed into UK law as part of the Great Repeal Bill. The Government should be clear that this means all EU legal requirements that are in force on the day that the UK leaves the EU, not just those that are in force at the point of triggering Article 50.**

## **The role of the Equality and Human Rights Commission in equalities after exiting the EU**

62. The Equality and Human Rights Commission (EHRC) will remain a national equality body after the UK has left the EU, as its legislative status is underpinned by the Equality Act 2006. Some of those submitting evidence argued that the role of the EHRC would increase in importance after the UK leaves the EU. The Employment Lawyers' Association explained:

In the wake of leaving the EU the role of the EHRC will remain undiminished, unless and until there are reductions in its statutory responsibilities. It is possible that the need for its services, particularly in supporting strategic litigation, may increase if the uncertainties about continued role CJEU equality case law give rise to the need for issues of national importance to be tested in the courts. It will remain important for the robustness of the framework of equality and human rights law within the UK that the EHRC or similar body retains its independence from Government, its regulatory role and its enforcement powers to the importance of its role. In order to do this it must be adequately resourced.<sup>44</sup>

63. Other submissions echoed these concerns about the reduction in capacity of the EHRC to monitor and enforce equality protections that has taken place since 2008.<sup>45</sup> These submissions argued that this will have a negative effect on the EHRC's ability to continue these roles after the UK leaves the EU.

64. EHRC officials told the inquiry that the Commission strongly believes that it has a role to play both during the negotiations and after leaving the EU. The EHRC's written submission states:

The Commission must have a central role in advising on any changes to laws or policies related to EU exit which would impact upon equality or human rights. This will include securing continuing equality standards during negotiations and following EU exit, working with Government, civil

44 Employment Lawyers Association ([OEU0018](#)) para 48

45 [NAO Briefing on the Equality and Human Rights Commission, January 2017](#)

society and others. We will advise on the equality and human rights impact of any proposals to change equality legislation or other laws that have a disproportionate impact on one or more groups, in line not only with our duties under the 2006 Act, but also the Paris Principles and the Belgrade Principles.<sup>46</sup>

65. In terms of how the EHRC intends to achieve its involvement in monitoring the process of leaving the EU, its Chief Executive, Rebecca Hilsenrath, explained:

We have been informed that the most appropriate channels for us to conduct these conversations through going forward will be the Government Equalities Office and the Ministry of Justice. That means that we will not have a direct conversation with the Department for Brexit. We think that means the internal arrangements within Government are going to be much more important. It is really important for Government to be taking a leading role. This is about ensuring that the GEO itself has a strong role in co-ordinating policy across Government and having a very strong dialogue and relationship with the Brexit Department.<sup>47</sup>

**66. We note that the Equality and Human Rights Commission has said it does not expect to be in direct communication with the Department for Exiting the EU. In order to identify implications for equality protections as the process of leaving the EU continues, that Department will need to have a strong internal lead on equalities matters and a named Ministerial lead. That lead should work with the Government Equalities Office in order to draw on its expertise.**

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46 Equality and Human Rights Commission ([OEU0040](#)) para 40

47 Q69

### 3 The role of civil society in UK equalities policy after exiting the EU

67. UK civil society organisations play an important role in protecting equalities in the UK. This can take place at local level, for example delivering frontline services and advice to vulnerable groups, and at national level by supporting and informing the development of equalities policies and reporting back on their implementation from the grassroots. It can also take place at European and international level, where civil society organisations work in equality networks to share good practice, participate in equality policymaking, and provide shadow reports to the bodies that monitor international agreements, such as UN monitoring committees.

68. Professor Anna Lawson, Professor of Law and Director of the Centre for Disability Studies at the University of Leeds, gave the example of accessibility to show the breadth of activity across law, policy and funding at EU level:

In terms of accessibility, in the last few years there has been a really strong set of initiatives from the EU. Accessibility is very much part of the EU disability strategy. It is embedded in a whole raft of legislation and policies, which impact on the UK in areas such as transport, procurement, social funds and websites. There is a new one coming in on public websites.<sup>48</sup>

69. Ali Harris, Chief Executive of the Equality and Diversity Forum, characterised the role of civil society organisations, charities and social enterprises as “providing a bridge between people’s lived experiences on the ground and research, and then connecting into policy making”.<sup>49</sup> Fairplay SouthWest told us that support for civil society organisations is important to enable them to monitor equality legislation. It told us:

Support for civil society groups is essential in the effective operation and enforcement of proactive, responsive legislation such as the Public Sector Equality Duty.<sup>50</sup>

70. After our evidence session in January 2017, we wrote to the Minister for Women and Equalities, Rt Hon Justine Greening MP, asking for more information about how the Government Equalities Office (GEO) was seeking to engage civil society organisations on the subject of exiting the EU. She responded that:

The GEO has also sought to engage stakeholders on the issue of EU exit. It ran a civil society consultation session on this as part of a wider NGO event in November. This was very informative in identifying and discussing some of the main concerns of equalities stakeholders [ ... ] GEO senior officials will continue to work on EU exit programmes in their regular meetings with the CEO of the EHRC, and with the Equality and Diversity Forum.<sup>51</sup>

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48 Q40

49 Q57

50 Fair Play South West ([OEU0014](#)) para 8

51 Letter from Minister for Women and Equalities on the work of the Government Equalities Office, [23 February 2017](#)

71. Witnesses discussed the close relationships that have developed over time between many UK civil society organisations and European equality networks. Professor Anna Lawson argued that there would be benefits to civil society organisations, Governments and equality bodies remaining part of EU networks after the UK leaves the EU:

One of the great benefits of EU structures has been networks of experts, networks of Governments, networks of civil society and networks of equality bodies that bring together people from different countries with different types of expertise and different ideas of implementation of these agreed standards [ ... ]. Staying part of these processes [ ... ] is really important, even if we come out of the EU.<sup>52</sup>

72. Professor Sylvia Walby, Distinguished Professor of Sociology and UNESCO Chair in Gender Research, Violence and Society UNESCO Centre at Lancaster University, also explained to us how the UK could stay part of European networks after the UK leaves the EU:

leaving the EU does not have to mean leaving the Europe-wide civil societal networks [ ... ]. The UK could maintain its engagement in these networks, which are a mix of civil society, governmental agency, research, capacity-building and exchange of best practice [ ... ]. We do not have to come out, but it would mean that the funding streams would have to be separately identified.<sup>53</sup>

73. Women's Aid is one of several organisations that has proposed that there should be formal mechanisms for civil society to engage with the Government on equalities, both during the process of exiting and once the UK exits the EU:

Women's organisations, campaigners and legal professionals have significant expertise in this area, which the Government and civil service can benefit from during this process. The Government should consider establishing formal advisory groups or panels on women's rights and violence against women and girls, who would provide expertise, guidance and recommendations during the Brexit negotiations. Re-establishing former mechanisms, such as the Gender Expert Group on Trade, could be considered in this regard.<sup>54</sup>

74. Professor Walby elaborated on this, noting the importance of resourcing to enable this engagement:

Maybe one of the concepts there is of a platform at which civil society organisations meet Government, which needs resourcing in order for it to occur, both jointly across the equalities but also specifically for each of the different strands. The deepening of that will be very important.<sup>55</sup>

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52 Q43

53 Q59

54 Women's Aid Federation of England ([OEU0039](#)) para 39

55 Q59

75. However, we also heard evidence raising concerns about reductions in funding and resourcing for civil society organisations. The Discrimination Law Association told us that:

The impact of local authority cuts on charities and NGOs—and perhaps particularly on disabled people’s organisations—has also been significant and seriously affects participation in public life. That will adversely affect the development of law and policy in this area and it should be reversed as a matter of urgency.<sup>56</sup>

76. Different UK Government departments and devolved administrations around the UK take different approaches to developing equalities policies and engaging civil society. Several organisations put forward the view that a cross-departmental approach to equalities was necessary, some citing the example of the Home Office-led Violence Against Women Strategy<sup>57</sup> as an example of a policy area which benefits from a well-established structure and mechanism for drawing upon the expertise of civil society organisations.<sup>58</sup> This could be replicated across other policy areas and sit within an over-arching equality strategy.

77. Ali Harris expanded on the suggestion of a cross-government strategy and how it might sit within government:

The clear thing is that the Government Equalities Office needs to have a strong co-ordinating role. If we had an overall strategy, it would potentially assist them in playing that co-ordinating role, because they would have a sense of what they are trying to achieve and when, and specifically what they are trying to achieve through that co-ordination. Otherwise, you can co-ordinate without a strategy, but it is co-ordinating disparate things rather than co-ordinating towards an overarching goal.<sup>59</sup>

**78. We believe that there is a wealth of expertise on equalities in civil society organisations that could be harnessed to enhance the development of UK equalities policies after exiting the EU. In some places, there are already platforms or structures in place that may need to be built upon. In others, they need to be developed. A joined-up approach across government departments will be important to ensure cohesive working, and with a focus on each equality area.**

**79. *The Government should develop a cross-government equality strategy, in order to ensure engagement across government departments and provide a platform for linking with and drawing on the expertise of civil society organisations.***

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56 Discrimination Law Association ([OEU0032](#))

57 Home Office, *Ending Violence Against Women and Girls: 2016–2020*, March 2016

58 For example, Women’s Aid ([OEU0039](#)), Rape Crisis ([OEU0031](#))

59 Q52

## 4 Research on and funding for equalities after exiting the EU

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80. There are long-held and inter-connected networks of research on equality initiatives between the UK and European partners which have contributed to a shared knowledge base on equalities and comparative data that is invaluable for policy-making. An example is the EU-wide survey conducted by the EU's Fundamental Rights Agency on violence against women based on interviews with 42,000 women across the EU.<sup>60</sup>

81. Some European research networks are available to all countries in Europe, whether EU members or not, while membership of others will depend on the UK's relationship with the EU after exiting. Professor Walby told us that:

many of the research institutions in which the EU is a major player are open to countries outside the EU, so it is perfectly possible, if the UK pays the relevant fees, to be part of them. The research field does not have rigid boundaries in the same way as we see in relation to the single market. If you were to say that Britain wanted to be part of the European Research Council and the Horizon 2020 programmes, and contributing to the Women Against Violence Europe network, it would be possible.<sup>61</sup>

82. Professor Walby reported that equalities had not, to date, been a part of developing research programmes related to the UK exiting the EU:

At the moment, the equalities agenda has not taken priority, and given these are very important issues, as we move through Brexit, the explicit naming of them as priority agendas within the research entities we have that engage in funding would be an important contribution to ensuring that Brexit proceeds in the best possible manner.<sup>62</sup>

83. If, after exiting the EU, the UK does not continue to participate in some of the current data collection processes, other such processes, both domestic and international, may become more important for the UK's evidence base on equalities including comparative data in order to develop equalities policies. Professor Walby suggested that these could include requirements to collect data to achieve the Sustainable Development Goals (led by the Office for National Statistics in the UK), the Organisation for Economic Co-operation and Development (OECD) measurement of equality indicators and recent International Monetary Fund (IMF) work on gender budgeting.

84. The Committee received evidence about funding for research and other equality initiatives in the UK from EU institutions. Sussex University told us:

There are likely to be indirect and long term impacts on equality protection in the UK if the research community loses access to EU funding sources, as

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60 European Union Agency for Fundamental Rights, [Violence against women: EU-wide survey](#), 2014

61 Q47

62 Q62



seems likely. Particularly given that the UK is one of the largest recipients of research funding in the EU. This will have an impact on the evidence base for equality and law in the future.<sup>63</sup>

85. It is not only in relation to funding for research where gaps may appear in future, but equality projects such as advocacy, service delivery and legal advice. Witnesses noted the particular importance of the EU Structural Funds to equalities initiatives; some of this funding goes directly to equality projects and some is channelled through state bodies. Concerns have been raised about potential gaps in funding for equalities initiatives once the UK has left the EU. Ali Harris of the Equality and Diversity Forum, a membership organisation of UK equality and humans organisations, told us that:

As we go forward, one of the concerns that members have is that the funding—some of which, such as the ESF, goes to the voluntary sector, which is one issue, but a lot of which goes instead to local authorities or the local enterprise partnerships—enables the empowerment of the beneficiaries of charities of the voluntary sector, wherever it goes. If that is not happening or if it is not replaced in one way or another, what will be the impact on the voluntary sector in terms of the rise in demand? It needs to be quantified somehow, and that has to be a dialogue between the voluntary sector and policy makers.<sup>64</sup>

86. The Equality and Diversity Forum stated that there was a need to assess the extent of research and other equality initiatives that currently receive EU funds to ensure that progress continues:

There are other EU initiatives that support embedding equality law in practice and/or help shape inclusive equality policy-making in the UK. These include funding such as the millions of pounds in investment from the European Structural Fund to support progress in the four nations on issues such as gender and age equality. It includes grants providing hundreds of thousands of pounds of investment through a range of streams such as the EC Daphne III programme, Rights, Equality and Citizenship Programme, PROGRESS programme, and Partnership programme for civil society organisations. It also includes policy mechanisms such as the Roma Integration Strategy. It will be important to ensure that the extent of these initiatives are fully scoped and that effective mechanisms and resourcing are put in place both to continue progress in these areas, and to enable on-going collaboration and exchange of good practice with colleagues in the EU.<sup>65</sup>

87. The Minister for Women and Equalities, Rt Hon Justine Greening MP, told us that the UK has a strong research base and that:

I am looking to see what we can do to strengthen it further. I would like to see the UK really be a trailblazer in having a strong evidence base around what works, in tackling discrimination, particularly around gender.<sup>66</sup>

63 School of Law, Politics and Sociology, University of Sussex ([OEU0007](#)) para 27

64 Q57

65 Equality and Diversity Forum ([OEU0035](#)) para 21

66 Oral evidence taken on 18 January 2017, [HC \(2016–17\) 933](#), Q16

88. The Government's White Paper sets out its commitments to funding EU funded projects. It states that all European Structural and Investment Funds (ESIFs) projects signed, or with funding agreements that were in place before the Autumn Statement 2016, will be "fully funded, even when these projects continue beyond the UK's departure from the EU." It goes on to say that for projects signed after the Autumn Statement 2016 and which continue after the UK has left the EU:

HM Treasury will honour funding for projects if they provide strong value for money and are in line with domestic strategic priorities.<sup>67</sup>

89. In relation to bids made directly to the Commission by UK organisations (including Horizon 2020) the Government says that institutions, universities and businesses should continue to bid for funding and that:

We will work with the Commission to ensure payment when funds are awarded. HM Treasury will underwrite the payment of such awards, even when specific projects continue beyond the UK's departure from the EU.<sup>68</sup>

90. The Government has also stated that it will consult with stakeholders to review all EU funding schemes to ensure any ongoing funding commitments best serve the UK's national interests.<sup>69</sup>

91. In our letter to the Minister for Women and Equalities, sent before the White Paper was published, we asked what plans the Government has to map civil society and research work in the equalities sphere which currently makes use of EU networks and funding, and what analysis is planned to establish where there might be a risk of gaps emerging or expertise being lost. In her response, the Minister said:

The Rights, Equality and Citizenship Programme (2014–2020) is the EU's key funding mechanism for equality and non-discrimination work, including research and civil society activity. The Ministry of Justice is the UK Government's lead on this programme. The GEO will be working closely with them, and other Departments as necessary, to understand the activities supported by this programme and the impact of changes following EU exit.<sup>70</sup>

**92. We welcome the commitment by the Government to consult with stakeholders to review all EU funding. We urge that consultation with equality stakeholders begin immediately.**

**93. As the UK leaves the EU, the UK Government should actively seek to maintain and embed participation in international networks for equalities research. Networks**

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67 UK Government, [The United Kingdom's Exit from and New Partnership with the European Union](#) (February 2017) p 12

68 UK Government, [The United Kingdom's Exit from and New Partnership with the European Union](#) (February 2017) p 12

69 UK Government, [The United Kingdom's Exit from and New Partnership with the European Union](#) (February 2017) p 12

70 Letter from Minister for Women and Equalities on the work of the Government Equalities Office, [23 February 2017](#)

based around the United Nations, the Organisation for Economic Co-operation and Development and the International Labour Organisation are likely to become increasingly important.

94. In addition, leaving the EU does not mean that the UK cannot continue to play a part in European networks. This may mean opting into these networks on a pro-rata basis, which may require funding that was previously provided as part of EU membership. *The Government should seek to set aside funding for ensuring that UK research and civil society organisations can maintain international links that are vital for ensuring strong equality protection.*

95. *The Government should assess the extent of research and other equality initiatives that currently receive EU funds. It should then work with research and civil society organisations to identify and develop alternative sources of funding from either state or non-state sources. These funds should be ring-fenced for the same purposes as they were originally allocated for by the EU to allow the current equalities research to continue uninterrupted.*

## Annex: Draft equality clauses for the Great Repeal Bill

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We are grateful to Colm O’Cinneide, Karon Monaghan and Sandra Fredman for the following suggestions of ways in which equality clauses could be drafted into the Great Repeal Bill. These are examples of how a commitment to preventing regression in equalities could be achieved. We invite the Government to consider the most appropriate draft wording.

- ‘Nothing in this Act shall be read as limiting the protection afforded in law to persons because of a protected characteristic as defined by s. 4 of the Equality Act 2010.’
  - ‘This [Act] [Order] shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by the terms of the Equality Act 2010, taking account of its application by the courts of England and Wales, at the date of the coming into force of this [Act] [Order].’
  - ‘This [Act] [Order] shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by the terms of the Equality Act 2010, taking account of the decisions of the decisions of the courts of England and Wales and the European Court of Justice, at the date of the coming into force of this [Act] [Order].’
- ‘This [Act] [Order] shall under no circumstances constitute grounds for a reduction in the level of protection afforded by the terms of [include the laws endeavouring to protect], taking account of their application by the courts of England and Wales, at the date of the coming into force of this [Act] [Order].’
- ‘No provision enacted under statutory power herein granted to repeal, amend or otherwise modify primary legislation by order, may make provision amending or repealing any provision of the Equality Act 2010.’
  - ‘Any clause in the Act which permits ministers to modify, amend or repeal primary legislation by order, does not include a power to amend, repeal or otherwise modify the right to equality.’
  - ‘Ministerial powers to amend, modify or repeal primary legislation can only be used if:
    - i) the provision does not prevent any person from continuing to exercise any right or freedom which that person has by virtue of the Equality Act 2010 or other provisions previously derived from EU law which protect equality rights; or
    - ii) the provision is not of constitutional significance.’

## Conclusions and recommendations

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### The Government's policy and our inquiry

1. It is clear that the Government's policy intention is that there should be no erosion of the UK's equalities protections at the point of leaving the European Union. Our aim in conducting this inquiry has been to ensure that the goal of no erosion of rights and protections is attained. (Paragraph 13)

### Retaining the UK's strong legal equalities protections after exiting the EU

2. At present, domestic legislation and EU legal structures together provide the UK's strong equality protections. Stakeholders have expressed concern that the removal of the EU legal underpinning, including the court system, will lead to a weakening of equality protection in the future unless its full effects are understood. It is therefore important for the Government, during the process of leaving the EU, to ensure that robust equality protection is embedded at each milestone. The Government should ensure that equality protections—including but not limited to workers' rights—remain to the fore as negotiations begin and throughout the leaving process. (Paragraph 31)
3. Leaving the EU provides an opportunity to return to Parliament its role to ensure that equalities are robustly protected. The Equality Act 2010 is the culmination of decades of development of domestic protection of equalities. An additional clause in that Act adding a function of a declaration of compatibility into the Equality Act would act as an entrenchment of these rights that were enacted by Parliament. (Paragraph 42)
4. *The Government should give strong consideration to bringing forward an amendment to the Equality Act 2010 to mirror provisions in the Human Rights Act 1998. The purpose of that amendment would be to set out that public authorities must not act in a way that contravenes the Equality Act unless required to do so by another Act of Parliament; that ministers, when presenting any Bill, must make a declaration of compatibility with the Act; that interpretation of legislation by the courts must take account of the Act and be read as far as possible to comply with its provisions; and that, if any legislation is incompatible with the Act, a declaration of incompatibility should be made by the court.* (Paragraph 43)
5. The Great Repeal Bill will be a significant opportunity for the Government to achieve its objective of maintaining existing equality protections at the point of leaving the EU, and to turn its policy intentions into legislative commitments. (Paragraph 58)
6. *The Government should include a clause in the Great Repeal Bill that explicitly commits to maintaining the current levels of equalities protection when EU law is transposed into UK law. A number of different ways of drafting such a clause have been suggested to us, which we invite the Government to consider and comment on.* (Paragraph 59)

7. The status in the UK of future EU case law is currently unclear. While the Government has been clear that existing case law will be transposed through the Great Repeal Bill, it has not provided such clarity for future case law. *We therefore recommend that the proposed status of future Court of Justice of the EU case law be clarified and legislated for in the Great Repeal Bill.* (Paragraph 60)
8. *The Government's White Paper has stated that all existing legislation will be transposed into UK law as part of the Great Repeal Bill. The Government should be clear that this means all EU legal requirements that are in force on the day that the UK leaves the EU, not just those that are in force at the point of triggering Article 50.* (Paragraph 61)
9. We note that the Equality and Human Rights Commission has said it does not expect to be in direct communication with the Department for Exiting the EU. In order to identify implications for equality protections as the process of leaving the EU continues, that Department will need to have a strong internal lead on equalities matters and a named Ministerial lead. That lead should work with the Government Equalities Office in order to draw on its expertise. (Paragraph 66)

### The role of civil society in UK equalities policy after exiting the EU

10. We believe that there is a wealth of expertise on equalities in civil society organisations that could be harnessed to enhance the development of UK equalities policies after exiting the EU. In some places, there are already platforms or structures in place that may need to be built upon. In others, they need to be developed. A joined-up approach across government departments will be important to ensure cohesive working, and with a focus on each equality area. (Paragraph 78)
11. *The Government should develop a cross-government equality strategy, in order to ensure engagement across government departments and provide a platform for linking with and drawing on the expertise of civil society organisations.* (Paragraph 79)

### Research on and funding for equalities after exiting the EU

12. We welcome the commitment by the Government to consult with stakeholders to review all EU funding. We urge that consultation with equality stakeholders begin immediately. (Paragraph 92)
13. As the UK leaves the EU, the UK Government should actively seek to maintain and embed participation in international networks for equalities research. Networks based around the United Nations, the Organisation for Economic Co-operation and Development and the International Labour Organisation are likely to become increasingly important. (Paragraph 93)
14. In addition, leaving the EU does not mean that the UK cannot continue to play a part in European networks. This may mean opting into these networks on a pro-rata basis, which may require funding that was previously provided as part of EU membership. *The Government should seek to set aside funding for ensuring that UK research and civil society organisations can maintain international links that are vital for ensuring strong equality protection.* (Paragraph 94)

15. *The Government should assess the extent of research and other equality initiatives that currently receive EU funds. It should then work with research and civil society organisations to identify and develop alternative sources of funding from either state or non-state sources. These funds should be ring-fenced for the same purposes as they were originally allocated for by the EU to allow the current equalities research to continue uninterrupted. (Paragraph 95)*

# Formal Minutes

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**Wednesday 22 February 2017**

Members present:

Mrs Maria Miller, in the Chair

Lucy Allan

Mrs Flick Drummond

Philip Davies

Draft Report (*Ensuring strong equalities legislation after the EU exit*), proposed by the Chair, brought up and read.

*Ordered*, that the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 95 read and agreed to.

Annex and Summary agreed to.

*Resolved*, That the Report be the Seventh Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 28 February 2017.]



## Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

### Wednesday 16 November 2016

*Question number*

**Professor Sandra Fredman QC**, University of Oxford, **Karon Monaghan QC**, Discrimination Law Association, **Dr Panos Kapotas**, University of Portsmouth, and **Professor Satvinder Juss**, King's College London

[Q1–38](#)

### Wednesday 30 November 2016

**Ali Harris**, Chief Executive, Equality and Diversity Forum; **Professor Anna Lawson**, Director, Centre for Disability Studies, Leeds University, and **Professor Sylvia Walby**, Professor of Sociology, University of Lancaster

[Q39–63](#)

**Rebecca Hilsenrath**, Chief Executive, Equality and Human Rights Commission, and **Clare Collier**, Senior Managing Lawyer, Equality and Human Rights Commission

[Q64–83](#)

## Published written evidence

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The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

OEU numbers are generated by the evidence processing system and so may not be complete.

- 1 Ascent ([OEU0012](#))
- 2 Bristol Equality Influencing Network Group ([OEU0020](#))
- 3 British Humanist Association ([OEU0003](#))
- 4 Centre for Diversity Policy Research and Practice ([OEU0006](#))
- 5 Citizens Advice ([OEU0041](#))
- 6 Discrimination Law Association ([OEU0032](#))
- 7 Distinguished Professor of Sociology Sylvia Walby ([OEU0004](#))
- 8 Dr James Hand and Dr Panos Kapotas ([OEU0010](#))
- 9 Dr Susan Milner ([OEU0037](#))
- 10 Employment Law Bar Association ([OEU0017](#))
- 11 Employment Lawyers Association ([OEU0018](#))
- 12 Equality and Diversity Forum ([OEU0035](#))
- 13 Equality and Human Rights Commission ([OEU0040](#))
- 14 Equality Commission ([OEU0036](#))
- 15 Fair Play South West ([OEU0014](#))
- 16 Fawcett Society ([OEU0033](#))
- 17 IC Change ([OEU0016](#))
- 18 Inclusion London ([OEU0002](#))
- 19 Leigh Day Solicitors ([OEU0030](#))
- 20 LGBT Consortium ([OEU0009](#))
- 21 Liberty ([OEU0042](#))
- 22 Maternity Action ([OEU0011](#))
- 23 Mr Michael Toze ([OEU0001](#))
- 24 Ms Jo Chimes ([OEU0021](#))
- 25 National Alliance of Women's Organisations ([OEU0043](#))
- 26 Oxford Human Rights Hub ([OEU0008](#)), ([OEU0045](#))
- 27 Papworth Trust ([OEU0005](#))
- 28 Rape Crisis England and Wales ([OEU0031](#))
- 29 RNIB (Royal National Institute of Blind People) ([OEU0023](#))
- 30 School of Law, Politics and Sociology, University of Sussex ([OEU0007](#))
- 31 Scope ([OEU0038](#))
- 32 Scottish Women's Convention ([OEU0044](#))
- 33 Stonewall ([OEU0029](#))

- 34 The National LGB&T Partnership ([OEU0027](#))
- 35 TUC ([OEU0015](#))
- 36 UK Government ([OEU0026](#))
- 37 UNISON - the public services union ([OEU0019](#))
- 38 Unite the union ([OEU0034](#))
- 39 Women's Aid Federation of England ([OEU0039](#))
- 40 Working Families ([OEU0022](#))

## List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the [publications page](#) of the Committee's website.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2015–16

First Report	Transgender Equality	HC 390
Second Report	Gender Pay Gap	HC 584 (HC 963)
Third Report	Appointment of the Chair of the Equality and Human Rights Commission	HC 599

### Session 2016–17

First Report	Pregnancy and maternity discrimination	HC 90 (Cm 9401)
Second Report	Employment opportunities for Muslims in the UK	HC 89 (Cm 9371)
Third Report	Sexual harassment and sexual violence in schools	HC 91 (HC 826)
Fourth Report	Equalities analysis and the 2015 Spending Review and Autumn Statement	HC 825 (HC 974)
Fifth Report	Women in the House of Commons after the 2020 election	HC 630
Sixth Report/ First Joint Report	High heels and workplace dress codes	HC 291
First Special Report	Sexual harassment and sexual violence in schools: Government Response to the Committee's Third Report	HC 826
Second Special Report	Equalities analysis and the 2015 Spending Review and Autumn Statement: Government Response to the Committee's Fourth Report	HC 974
Third Special Report	Gender Pay Gap: Government Response to the Committee's Second Report of Session 2015–16	HC 963