

Charter of Fundamental Rights of the EU

Right by Right Analysis

5/12/2017

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EXECUTIVE SUMMARY

- This document sets out the Government's analysis of the effect of the treatment of fundamental rights in the EU (Withdrawal) Bill.
- The Charter of Fundamental Rights of the EU has the same legal status as the other EU treaties. It was proclaimed in 2000 by the EU institutions, and given legal effect by the Lisbon Treaty on its entry into force in December 2009.
- The Charter was not the source of fundamental rights in EU law. They are drawn from EU primary and secondary law. The Court of Justice of the EU introduced the idea of respect for human rights as part of the general principles of EU law and over the years went on to recognise a number of fundamental rights as general principles of EU law.
- The Charter was clearly not intended to create new rights, but rather to reaffirm rights which already existed in EU law: a point made clear in the recitals of the Charter itself and Protocol 30 on the application of the Charter to Poland and the UK . Additionally, the Charter does not apply to member states in everything they do. While it applies to the EU and its institutions in all areas, it only binds member states insofar as they are acting within the scope of EU law.
- The European Union (Withdrawal) Bill will preserve domestic laws which implement EU law and convert directly applicable EU law into UK law. The Charter of Fundamental Rights will not be incorporated into domestic law on exit day, but insofar as the rights and principles underpinning the Charter exist elsewhere in directly applicable EU law or EU law which has been implemented in domestic law, that law will be preserved and converted by the Bill. One such source of EU law that underpins the Charter is the general principles of EU law (including those that constitute fundamental rights). The conversion of general principles of EU law into UK law is dealt with in the accompanying text.
- It is important that the Charter is viewed as a whole. There is no hierarchy of rights in the Charter; no one right is more important than another, and certain rights in the Charter will conflict with and have to be balanced against other rights in the Charter.
- The Government has been clear that it does not intend that the substantive rights protected in the Charter of Fundamental Rights will be weakened. Those rights will continue to be protected in a number of ways. First, as explained above, rights will continue to be protected through the EU law that

is preserved and converted by the Bill. Second, eighteen of the articles correspond, entirely or largely, to articles of the European Convention on Human Rights and are, as a result, protected both internationally and, through the Human Rights Act 1998 and the devolution statutes, domestically. Finally, the substantive rights protected in many articles of the Charter are also protected in domestic law via the common law or domestic legislation.

- Many articles of the Charter set out principles, which are different from rights. Principles cannot be relied upon directly by individuals, in the way that rights can.
- Eight articles constitute rights which are intrinsically linked to EU citizenship, and make sense only in the context of the relationship between a member state and the Union.
- The remaining articles include rights which will continue to be reflected in UK law in a range of ways - including through Clause 4 of the EU (Withdrawal) Bill which will preserve Treaty rights which are directly effective, through the retention in UK law of general principles of EU law for interpretative purposes and case law of the CJEU, and through other domestic legislation, such as the Equality Act 2010 in England, Scotland and Wales, and equality legislation and regulations in Northern Ireland.
- The UK has a long tradition of commitment to human rights which will not change after withdrawal from the European Union. The Charter of Fundamental Rights reflects and reaffirms a range of rights and principles which originate and find protection through a range of other sources.
- The Government has made clear that we are willing to look again at some of the technical detail about how the Bill deals with the general principles of EU law. Specifically, we will look at whether and how some challenges based on the general principles might continue after exit, in a way which best fits with our longstanding constitutional traditions and which minimises uncertainty for businesses and individuals. The rights landscape is complex and our approach is to seek to maximise certainty and minimise complexity and not remove any substantive rights that UK citizens currently enjoy. Our commitment to look into this particular issue, working constructively with Parliament, is very much in line with that approach.
- The UK has made clear its intention to secure an implementation period to provide certainty and continuity for people, businesses and public services while the UK and EU implement the detailed arrangements underpinning their future relationship. The framework for this time-limited period would be the existing structure of EU rules and regulations. The analysis in this document

does not prejudice the terms of any implementation period to be agreed between the UK and the EU.

INTRODUCTION

1. This document sets out the Government's analysis of the effect of the provisions in the EU (Withdrawal) Bill ("the Bill") which relate to the Charter of Fundamental Rights. This document should be read alongside the ECHR memorandum for the Bill¹. Information is drawn from the explanations relating to the Charter of Fundamental Rights (2007/C 203/02). These set out the sources of the provisions of the Charter and were agreed alongside it. As Article 6 of the Treaty on European Union (TEU) makes clear, due regard must be had to the explanations when interpreting and applying the Charter.
2. This document sets out how the Government considers that fundamental rights that are currently protected by EU law will be protected after exit from the EU. It does not, however, purport to be an exhaustive analysis and is being provided only as guidance in the context of the Bill. It should not be relied on as an authoritative statement of the law, as only the courts can provide that.
3. The UK has made clear its intention to secure an implementation period to provide certainty and continuity for people, businesses and public services while the UK and EU implement the detailed arrangements underpinning their future relationship. The framework for this time-limited period would be the existing structure of EU rules and regulations. The analysis in this document does not prejudice the terms of any implementation period to be agreed between the UK and the EU.

Fundamental rights and the Charter of Fundamental Rights

4. Fundamental rights form part of the EU's legal order. They are recognised in the Treaties, a number of them have been recognised as general principles of EU law by the CJEU, and most recently they have been reaffirmed in the Charter of Fundamental Rights.
5. The Charter of Fundamental Rights did not create any new rights. Rather, it reaffirmed the existing legally binding fundamental rights, in a new and binding document. This is made clear in the Charter itself and in Protocol 30 on the application of the Charter to Poland and to the United Kingdom, which states that 'the Charter reaffirms the rights, freedoms and principles

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/660987/Repeal_Bill_EC_HR_memo.pdf

recognised in the Union and makes those rights more visible, but does not create new rights or principles'. CJEU case law has also confirmed this.

6. The Charter also reaffirmed existing principles of EU law, which are different from rights and which are different from general principles of EU law. Principles cannot be relied upon directly by individuals, in the way that rights can. They may be taken into account by the EU institutions and by member states when they are acting in the scope of EU law, and they are relevant when courts are interpreting EU and national laws. They are no different from, and in some cases replicate, many long-standing provisions in the Treaties that similarly do not grant individual rights.
7. The Charter, and the underlying rights and principles it reaffirmed, always apply to EU institutions but only apply to member states when they are acting within the scope of EU law. So the Charter is not relevant in relation to situations that fall outside the scope of EU law. Determining whether a particular situation falls within the scope of EU law can be complex and will depend on the specific facts of the case. Furthermore, some of the rights in the Charter, specifically those in Title V, such as the right to stand for election to the European Parliament, reflect provisions in the Treaties and other EU law that depend on our being a member of the EU.
8. It is important that the Charter is viewed as a whole. There is no hierarchy of rights in the Charter; no one right is more important than another, and certain rights in the Charter will conflict with and have to be balanced against other rights in the Charter. Title VII of the Charter contains general provisions in accordance with which the Charter must be interpreted. For example, Article 52 of the Charter confirms that the rights recognised in the Charter may be limited, rather than constituting absolute rights; and that it is necessary to have regard to the explanations that accompany each Article of the Charter. Therefore, although this document takes a 'right by right' approach, it is necessary to keep in mind that the Charter itself is not divisible in this way. The Charter rights should not be applied in isolation.

Fundamental rights in the UK

9. In the UK, EU fundamental rights are created in various ways and can be identified in various places. They are in the EU Treaties, in CJEU jurisprudence (as general principles of EU law), and in direct EU legislation such as regulations and decisions, which currently flow into domestic law under section 2(1) of the European Communities Act 1972. They are reaffirmed in the Charter, which has the same legal status as the Treaties.

They are also found in domestic legislation which implements EU obligations, including domestic legislation made under section 2(2) of that Act, and relevant domestic case law.

10. Of course human rights have a long history in the UK which pre-dates our membership of the EU. UK law provides strong domestic protection of human rights. Rights are protected in domestic legislation, most obviously in the Human Rights Act 1998 and in the devolution statutes. They exist at common law, such as the common law rights of access to justice and the right to a fair hearing. These domestic rights are not limited in the same way as corresponding EU fundamental rights, because they apply more widely than within the scope of EU law.
11. Some fundamental rights are protected in legislation made by the devolved institutions. The analysis that follows sets out relevant examples of this.
12. In addition, they may be reflected in other international agreements, notably in the European Convention on Human Rights but also in other UN treaties. The UK has agreed to be bound by 7 United Nations human rights treaties (also called Conventions and Covenants), and a number of optional protocols². These treaties bind the UK in international law; this means that they are not part of the law of the UK. But there is a presumption against violating international law when the courts interpret legislation.

The effect of the Bill

13. The aim of the Bill is to ensure a smooth and orderly transition as the UK leaves the EU. A key objective of the Bill is to preserve rights that individuals and businesses currently enjoy as a result of the UK's membership of the EU. Generally speaking, the Bill preserves and converts those rights; it does not pick and choose between the different sources of EU rights but takes a

²The International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political Rights (plus second Optional Protocol to the ICCPR aiming at the abolition of the death penalty); the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination Against Women (plus Optional Protocol to CEDAW (on the right of individual petition to the UN and the inquiry procedure)); the Convention Against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment (plus Optional Protocol to the CAT, on the establishment of a UK National Preventive Mechanism to prevent torture); the Convention on the Rights of the Child (plus Optional Protocol to the CRC on the involvement of children in armed conflict and Optional Protocol to the CRC on the sale of children, child prostitution and child pornography); the Convention on the Rights of Persons with Disabilities (plus Optional Protocol to the CRPD (on the right of individual petition to the UN and the inquiry procedure)); the Council of Europe Convention against Trafficking in Human Beings.

comprehensive approach to ensure that, as a general rule, the same rules and laws will apply and the same rights will be available before and after exit.

14. However, as we leave the EU, and cease to be bound by our obligations as a member state, it is inevitable that some cross-cutting elements of the EU's legal framework will not be kept. This outcome and the approach the Bill takes is a natural consequence of the decision to leave the EU.
15. In line with this, Clause 5 of the Bill provides for certain exceptions to the saving of EU derived domestic legislation and incorporation of EU law. It provides that the Charter of Fundamental Rights will not form part of domestic law after exit day. It also provides that the principle of the supremacy of EU law does not apply to any enactment or rule of law passed or made on or after exit day.
16. The Bill is retaining the general principles of EU law, as they have been recognised by the CJEU before exit day, for interpretative purposes. Furthermore, the Bill will retain pre-withdrawal CJEU case law which is relevant to the interpretation of retained EU law. Schedule 1 to the Bill sets out that after the UK has left the EU it will not be possible for someone to bring a challenge (whether against legislation or administrative action) on the specific grounds of a failure to comply with any of the general principles of EU law (including those that constitute fundamental rights), or for a court to disapply legislation on the basis that it is incompatible with those general principles; other avenues of challenge will be available, but will differ dependent on the particular circumstances of an individual case, as this memorandum goes on to explain.
17. The Government has made clear that we are willing to look again at some of the technical detail about how the Bill deals with the general principles of EU law. Specifically, we will look at whether and how some challenges based on the general principles might continue after exit, in a way which best fits with our longstanding constitutional traditions and which minimises uncertainty for businesses and individuals. The rights landscape is complex and our approach is to seek to maximise certainty and minimise complexity and not remove any substantive rights that UK citizens currently enjoy. Our commitment to look into this particular issue, working constructively with Parliament, is very much in line with that approach.
18. Clause 6 sets out how retained EU law (the body of law that has been preserved or converted under the Bill) should be interpreted by the Courts after exit day. In particular, it provides that any question as to the meaning of retained EU law must, so far as that law is unmodified, be determined in UK courts in accordance with relevant pre-exit general principles of EU law and

relevant case law. This means that retained EU law will need to be read consistently with the general principles of EU law (including those that constitute fundamental rights) where it is possible to do so, and broadly speaking does not affect the current position as regards the pre exit case law of the CJEU. There are numerous examples of cases where the CJEU and our domestic courts have been able to interpret legislation so as to comply with the general principles of EU law (including those which constitute fundamental rights). In the context of the general principle of equal treatment, see for example *Chatzi* (Case C-149/10) and *Partridge Farms Ltd v Secretary of State for Environment, Food and Rural Affairs* [2009] EWCA Civ 284.

19. Principles codified in the Charter which are found in directives or in the Treaties may also be relevant for interpretative purposes. Clause 6(3) of the Bill provides that any question as to the meaning of retained EU law will be determined in UK courts in accordance with relevant pre-exit CJEU case law and general principles of EU law. CJEU case law requires that national laws must be interpreted, so far as possible, in light of relevant directives. As such, principles set out in the Charter which are based on principles in directives will continue to be relevant to the interpretation of retained EU law.
20. Furthermore, the CJEU in its case law has set out the requirement to take a purposive approach to interpretation where the meaning of a measure is unclear - i.e. considering the purpose of the law from looking at other relevant documents such as the treaty legal base and applying the interpretation that renders the provision of EU law compatible with the treaties and general principles of EU law. In many cases principles which are set out in the Charter replicate or are based on principles set out in the Treaties and so those principles (as set out in the Treaties) will continue to be relevant to the interpretation of retained EU law which relates to the relevant Treaty provision. For example, the principles set out in Article 37 of the Charter (environmental protection) are based on principles set out in Articles 11 and 191 TFEU. These principles will continue to be relevant to the interpretation of retained EU law in the field of environmental protection after exit.
21. A number of legislative changes will be necessary to ensure that there is a functioning statute book on exit day. Although many rights preserved under the Bill will continue to operate as they did before exit, in some cases it will be necessary to make further provision. Some of these provisions will be made by way of primary legislation, while others will be made by way of secondary legislation under the Bill. We have placed a number of limitations and restrictions on the powers under the Bill. For example, the power to correct deficiencies in retained EU law and the power to implement the withdrawal agreement will be time limited. The Bill also clearly states that it will not be

possible for the powers in clauses 7 to 9 of the Bill to be used to amend, repeal or revoke the Human Rights Act 1998 or any subordinate legislation made under it (see clauses 7(6)(e), 8(3)(d) and 9(3)(d)).

Enforcing fundamental rights after EU Exit

22. The effect of the Bill is that where a directly enforceable right exists in the EU Treaties, or direct EU legislation, or domestic legislation which implements EU obligations, it will be possible to bring a claim as now; and where the court is currently able to disapply legislation because of incompatibility with that right, it will continue to be able to do so where that retained EU law was passed or made before exit day.
23. Where a right is largely or wholly drawn from a general principle of EU law, as set out in CJEU case law, the right will be converted into UK law in the form of the interpretative obligation described above but the way in which someone may rely on that right will be different. It will not be possible for someone to bring a challenge after exit day on the specific grounds of a failure to comply with that right, or for a court to disapply legislation which is incompatible with that right. However, this does not mean that it will not be possible to challenge retained EU law or action taken by public bodies under retained EU law on rights grounds in those circumstances. There are many domestic routes of challenge which may be available depending on the circumstances. These include, amongst others, a claim which is commenced as a judicial review; a claim under the Human Rights Act 1998; or a claim under the common law. So, for example, although after exit it will not be possible to rely on the EU general principle of freedom of expression in order to challenge legislation or the actions of public bodies on the grounds of an incompatibility with that general principle, a challenge could nonetheless be brought under the corresponding right protected under the Human Rights Act 1998 (Article 10 ECHR).
24. Nor does it mean that there will be no remedy if a right has been breached. For example, executive action and secondary legislation can be struck down by the court as a result of a successful judicial review or under the Human Rights Act 1998; and courts may make a declaration of incompatibility in relation to primary legislation under the Human Rights Act 1998 (as happened in *Benkharbouche v Secretary of State for FCO* [2017] UKSC 62).
25. The UK has a long tradition of commitment to human rights which will not change after withdrawal from the European Union. The Charter of Fundamental Rights reflects and reaffirms a range of rights and principles

which originate and find protection through a range of other sources. The intention of the EU (Withdrawal) Bill is that those rights will continue to be protected.

DEFINITIONS

The Explanations

The explanations relating to the Charter (“the explanations”) are referred to throughout this document. They are published by the EU alongside the Charter and are intended to clarify the provisions of the Charter, indicating the scope and the sources of the rights and principles set out in the Charter.

The European Convention on Human Rights (ECHR)

The European Convention on Human Rights (ECHR) is an international treaty between the States of the Council of Europe. The United Kingdom was one of the countries that drafted the ECHR, and was one of the first countries to ratify it in 1951. The Convention came into force in 1953.

The Human Rights Act 1998 and Convention Rights

The Human Rights Act 1998 gives further effect in our domestic law to certain rights and freedoms drawn from the European Convention on Human Rights; these are called the Convention rights, and are set out at Schedule 1 to the Act. It applies throughout the United Kingdom, and is also protected in the devolution statutes, but not to the Channel Islands or the Isle of Man.

The Devolution Statutes

In September 1997, referendums were held in Scotland and Wales, and a majority of voters chose to establish a Scottish Parliament and a National Assembly for Wales. In Northern Ireland, devolution was a key part of the Agreement, sometimes referred to as the Good Friday Agreement or the Belfast Agreement, supported by voters in a referendum in May 1998. Following this public endorsement, Parliament passed three devolution Acts: the Scotland Act 1998; the Northern Ireland Act 1998; and the Government of Wales Act 1998 (which was later effectively superseded by the Government of Wales Act 2006).

TEU and TFEU

The Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) are the two key treaties of the EU. The TEU set out basic principles of the EU, provisions relating to the EU institutions (the Council, Parliament and Commission etc). It also covers provisions on the EU’s common foreign and security policy. The TFEU sets out more detail on what the EU is competent to do.

European Social Charter (ESC)

The European Social Charter 1961 is a Council of Europe instrument, distinct from the Community Charter of the Fundamental Social Rights of Workers 1989. It is non-justiciable, meaning that it cannot form the basis of a cause of action in UK courts, although it can be persuasive for the purposes of interpretation. It is regarded as the social and employment counterpart of the European Convention on Human Rights and is monitored by the Council of Europe's European Committee of Social Rights. It covers a wide range of fundamental rights in relation to working conditions, training, health, social security, social protection and medical assistance, within a framework of non-discrimination and specific protection for vulnerable persons such as the elderly, children, the disabled and migrants. The preamble of the TEU confirms the member states' attachment to fundamental social rights as defined in the European Social Charter 1961, and it is referred to in Article 151 TFEU which refers to the Charter. The UK ratified the original European Social Charter in 1962.

Community Charter of the Fundamental Social Rights of Workers

The Community Charter is an instrument of the European Union. All member states, including the UK have adopted the text. The legal status of the Community Charter is that of a mere political declaration, although the preamble to the TEU confirms the member states' attachment to fundamental social rights as defined in the Charter and Article 151 TFEU which refers to the Charter. It is used by the European Court of Justice to help interpret the meaning of EU legislation and in developing case law.

RIGHT BY RIGHT ANALYSIS

TITLE I - DIGNITY

ARTICLE 1 - Human Dignity

Article 1 says:

Human Dignity is inviolable. It must be respected and protected.

As the explanation to the Charter says, the right to human dignity constitutes the real basis of fundamental rights. This right comes from the 1948 Universal Declaration of Human Rights.

The right to human dignity exists independently of the Charter. It is a general principle of EU law which was established as part of EU law before the Charter came into force, and confirmed, for example, in the case of *Netherlands v Parliament and Council (Case C-377/98)*.

As explained in the introductory text, the Bill retains the general principles of EU law for interpretation purposes and so after exit our courts will be required to interpret retained EU law consistently with the general principle recognised by Article 1, so far as it is possible to do so.

Respect for human dignity is at the core of the UK's international human rights obligations and of the domestic human rights framework. Indeed, as the European Court of Human Rights' case law makes clear, respect for human dignity underlies many of the rights set out in the ECHR which is given further effect in UK law by the Human Rights Act 1998 and the devolution statutes. For example, in its judgment in *SW v UK* 1995, the Court emphasised that "the very essence [of the ECHR] is respect for human dignity and human freedom." The court has repeated this on a number of occasions since.

ARTICLE 2 - Right to life

Article 2 says:

1. *Everyone has the right to life.*
2. *No one shall be condemned to the death penalty or executed.*

As the explanation says, the meaning and scope of this article corresponds to Article 2 of the ECHR (right to life) and Article 1 of Protocol 6 to the ECHR (abolition of the death penalty). The UK has ratified both Protocol 13 and Protocol 6 to the ECHR, which abolish the use of the death penalty in all circumstances and the Murder (Abolition of the Death Penalty) Act 1965 abolished the death penalty for murder.

The ECHR is given further effect in domestic law by the Human Rights Act 1998 and the devolution statutes. As such, the rights in Article 2(1) of the Charter will continue to be protected in the UK by virtue of the Human Rights Act 1998 and the devolution statutes.

The right to life is further protected in the UK at common law, with the common law offences of murder, manslaughter and culpable homicide and in domestic legislation: the Corporate Manslaughter and Corporate Homicide Act 2007 provides for corporate responsibility for death by gross breach of duty of care; the Domestic Violence Crime and Victims Act 2004 criminalises the causing or allowing death of a child or vulnerable adult, or allowing them to suffer serious harm; the Children and Young Persons (Scotland) Act 1937 states that it is a criminal offence to wilfully neglect a child or cause such neglect; and the Criminal Justice Act (Northern Ireland) 1966.

ARTICLE 3 - Right to Integrity of the Person

Article 3 says:

1. *Everyone has the right to respect for his or her physical and mental integrity.*
2. *In the fields of medicine and biology, the following must be respected in particular:*
 - *the free and informed consent of the person concerned, according to the procedures laid down by law,*
 - *the prohibition of eugenic practices, in particular those aiming at the selection of persons,*
 - *the prohibition on making the human body and its parts as such a source of financial gain,*
 - *the prohibition of the reproductive cloning of human beings.*

As the explanation notes, in cases such as *Netherlands v Parliament and Council* (Case C-377/98) it was confirmed that the right to respect for physical and mental integrity is a general principle of EU law, and as such it exists independently of the Charter. The explanation to the Charter also makes clear that Article 3(2) sets out principles that should be used to guide EU institutions as they legislate in the field of medicine and biology, rather than setting out an enforceable right.

As explained in the introductory text, the Bill retains the general principles of EU law for interpretation purposes and so after exit our courts will be required to interpret retained EU law consistently with the general principle set out in Article 3, so far as it is possible to do so.

Respect for physical and psychological integrity forms part of the right to respect for private life in Article 8 ECHR. The ECHR is given further effect in the domestic law of the UK via the Human Rights Act 1998 and through the devolution statutes. The right to respect for private life will continue to be protected in the UK by virtue of the Human Rights Act 1998 and in the devolution statutes.

EU-derived domestic legislation and other domestic legislation which is relevant to the rights and principles set out in Article 3 will continue to form part of UK law after exit. The right to integrity of the person is protected by, for example, the Human Fertilisation and Embryology Act 1990 which prohibits reproductive cloning, and only enables the testing and selection of embryos for implantation where there is a particular risk that any resulting child will have or develop a serious disability, illness or medical condition; and the Human Tissue Act 2004 prohibits commercial dealings in human material for transplantation. This provision does not extend to Scotland. Equivalent provision is found in section 20 of the Human Tissue (Scotland) Act 2006.

Under the domestic law of the UK consent is generally needed for medical treatment. In limited circumstances treatment can be given without consent, subject to specific safeguards and in accordance with the law.

ARTICLE 4 - Prohibition of torture and inhuman or degrading treatment or punishment

Article 4 says:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

As the explanation says, the meaning and scope of this article corresponds to Article 3 of the ECHR (prohibition of torture and inhuman or degrading treatment). The ECHR is given further effect in domestic law by the Human Rights Act 1998 and the devolution statutes. As such, the rights in Article 4 of the Charter will continue to be protected in the UK by virtue of the Human Rights Act 1998 and the devolution statutes.

The prohibition on torture and inhuman or degrading treatment is protected elsewhere in domestic law, for example section 134 of the Criminal Justice Act 1988 makes torture a criminal offence in the United Kingdom.

ARTICLE 5 - Prohibition of slavery and forced labour

Article 5 says:

1. *No one shall be held in slavery or servitude.*
2. *No one shall be required to perform forced or compulsory labour.*
3. *Trafficking in human beings is prohibited.*

As the explanation to the Charter says, the rights in Article 5(1) and (2) have the same meaning and scope as the right in Article 4(1) and (2) of the ECHR (prohibition of slavery and forced labour). Article 5(3) stems from the right to human dignity and reflects provision made in: Decision 2009/371/JHA establishing Europol; Chapter VI of the Convention implementing the Schengen Agreement; and Framework Decision 2002/629/JHA on combating trafficking in human beings.

The ECHR is given further effect in domestic law by the Human Rights Act 1998 and the devolution statutes. As such, the rights in Article 5(1) and (2) of the Charter will continue to be protected in the UK by virtue of the Human Rights Act 1998 and the devolution statutes.

The Framework Decision and Directive 2011/36/EU on preventing and combating trafficking in human beings, which replaced it, have been implemented in domestic law: for example through the Modern Slavery Act 2015, which provides that both human trafficking and forced labour are offences in England and Wales; the Human Trafficking and Exploitation (Scotland) Act 2015 makes provision for such offences in Scotland; and the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Northern Ireland) Act 2015 makes provision for Northern Ireland.

Moreover, the UK is a party to the International Labour Organisation Fundamental Conventions, in particular the Forced Labour Convention 1930 and Worst Forms of Child Labour Convention 1999.

TITLE II: FREEDOMS

ARTICLE 6 - Right to liberty and security

Article 6 says:

Everyone has the right to liberty and security of person.

The explanation to the Charter says that the right in Article 6 has the same meaning and scope as the right in Article 5 ECHR (right to liberty and security). The ECHR is given further effect in domestic law by the Human Rights Act 1998 and in the devolution statutes. As such, the rights in Article 6 of the Charter will continue to be protected in the UK by virtue of the Human Rights Act 1998 and in the devolution statutes.

More generally, the right to liberty is protected in domestic law through, for example, the ability to apply for the writ of habeas corpus and through legislation such as the Police and Criminal Evidence Act 1984, the Police and Criminal Evidence (Northern Ireland) Order 1989 and the Criminal Procedure (Scotland) Act 1995.

ARTICLE 7 - Right to a private and family life

Article 7 says:

Everyone has the right to respect for his or her private and family life, home and communications.

The explanation to the Charter says that the right in Article 7 has the same meaning and scope as the right in Article 8 ECHR (right to respect for private and family life).

The right to a private and family life was also recognised as a general principle of EU law prior to the coming into force of the Charter, for example in the case of *National Panasonic* (Case C136/79). The right to respect for family life and the home is also a general principle of EU law (see *Commission v Germany* (case C 249/86) and *Kusionova* (Case C-34/13)).

As explained in the introductory text, the Bill retains the general principles of EU law for interpretative purposes and so after exit our courts will be required to interpret retained EU law consistently with the general principle recognised by Article 7, so far as it is possible to do so.

The ECHR is given further effect in domestic law by the Human Rights Act 1998 and through the devolution statutes. As such, the rights in Article 7 of the Charter will continue to be protected in the UK by virtue of the Human Rights Act 1998 and the devolution statutes.

More generally, domestic law protects this right in a number of ways, for example in the Children Act 1989, which ensures that the the family lives of children are not interfered with unless it is necessary to do so. The Children (Scotland) Act 1995 makes provision on, for example, parental rights and responsibilities and the protection and supervision of children – in a way which is consistent with Article 8 ECHR. In the field of criminal justice, the Police and Criminal Evidence Act (PACE) 1984 ensures that the right of entry and search of a home by the police is conducted in a proportionate and lawful manner, consistent with this right. In Scotland, rights of entry and search of a dwelling by the police are determined by a combination of common law and various statutory provisions dealing with particular situations. For example, the Marine (Scotland) Act 2010 sets out the procedures for applying for a warrant for a marine enforcement officer to enter a dwelling, rules about executing the warrant and other safeguards. The PACE (Northern Ireland) Order 1989 regulated the procedure to apply for a search warrant in Northern Ireland.

ARTICLE 8 - Right to the protection of personal data

Article 8 says:

1. *Everyone has the right to the protection of personal data concerning him or her.*
2. *Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.*
3. *Compliance with these rules shall be subject to control by an independent authority.*

The CJEU recognised that the right to protection of personal information was a general principle of EU law as early as 1969 in the case of *Stauder* (Case C- 29/69). The general principles of EU law will be retained by the Bill for the purposes of interpretation of the retained EU law. Therefore, domestic courts will be required to interpret retained EU law consistently with the general principle reflected in Article 8, so far as it is possible to do so.

The right to data protection also reflects the right to respect for private life in Article 8 of the ECHR. Although Article 8 of the ECHR is distinct from Article 8 of the Charter and Article 8 of the Charter has no direct equivalent in the ECHR, Article 8 of the ECHR has been held to encompass personal data protection (see for example *Z v Finland* (1997 25 E.H.R.R 371)) and the explanation confirms that Article 8 of the Charter is based on Article 8 ECHR.

The Data Protection Bill, currently before Parliament, will modernise the data protection laws in the UK to make them fit for purpose for our increasingly digital economy and society. For most data processing the Bill applies the standards found in the EU's General Data Protection Regulation (GDPR) (2016/679/EU). By having strong data protection laws and appropriate safeguards, businesses will be able to operate across international borders. This ultimately underpins global trade and having unhindered data flows is essential to the UK in forging its own path as an ambitious trading partner. The Data Protection Bill will ensure that modern, innovative uses of data can continue while at the same time strengthening the control and protection individuals have over their data.

The GDPR, which underpins the Data Protection Bill, will be preserved in our domestic law by the EU (Withdrawal) Bill. This will have direct effect in the UK. Article 1(2) of the GDPR states that it protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data. This

will have direct effect in the UK from 25 May 2018 and will be further entrenched in the domestic law of the UK by the Data Protection Bill, and will extend to the whole of the UK.

Article 8 of the Charter requires data processing within the scope of EU law to be processed fairly and with individuals having the right to access their data. While Article 8 is necessarily limited to the scope of EU law, the Data Protection Bill applies these principles to all personal data processing, including that out of scope of EU law.

Finally, Article 8 of the Charter requires that compliance with data protection rules shall be subject to control by an independent authority. Part 5 of the Data Protection Bill provides for the continuing operation of the Information Commissioner and Part 6 of the Bill provides her with enhanced enforcement powers. Further, the Bill extends the Information Commissioner's remit beyond the confines of the GDPR to provide total oversight of the UK's data protection system.

ARTICLE 9 - Right to marry and right to found a family

Article 9 says:

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

The explanation to the Charter says that the right to marry and found a family is based on Article 12 of the ECHR, but that its scope may be extended to other forms of marriage (such as same sex marriage) if these are established by national law. Article 9 does not therefore require states to allow same-sex marriages. The European Court of Human Rights has since held that Article 12 ECHR must be read in the same way (*Schalk and Kopf v Austria App.No.30141/04*).

The ECHR is given further effect in domestic law by the Human Rights Act 1998 and through the devolution statutes. As such, the right set out in Article 9 will continue to be protected in the UK by virtue of that Act.

More generally, domestic legislation in the UK protects rights in respect of, for example, divorce (in the Matrimonial Causes Act 1973, and the Matrimonial Causes (Northern Ireland) Order 1973), and marriage and civil partnerships (in the Civil Partnership Act 2004, which extends to Northern Ireland for example, the Marriage (Same Sex Couples) Act 2013, and in Scottish devolved legislation in the Marriage and Civil Partnership (Scotland) Act 2014, and the Marriage (Scotland) Act 1977, which the 2014 Act amends).

ARTICLE 10 - Freedom of thought, conscience and religion

Article 10 says:

- 1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.*
- 2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.*

As the explanation to the Charter says, the meaning and scope of Article 10(1) corresponds to Article 9 ECHR (freedom of thought, conscience and religion). Article 10(2) is derived from the common constitutional traditions of member states and the scope of the right to conscientious objection is a matter for the national law of each state; however, the right to conscientious objection is also protected by Article 9 ECHR (*Bayatyan v Armenia* [2012] 54 EHRR 15).

The ECHR is given further effect in domestic law by the Human Rights Act 1998 and through the devolution statutes. As such, the right in Article 10 of the Charter will continue to be protected in the UK by virtue of the Human Rights Act 1998 and the devolution statutes.

More generally, domestic legislation protects freedom of thought, conscience and religion. For example, the Public Order Act 1986 created the offence of incitement to religious hatred (as did the Public Order (Northern Ireland) Order 1987) the Criminal Justice (Scotland) Act 2003 established religious prejudice as an aggravating factor in offences, and the Criminal Justice and Immigration Act 2008 abolished the common law offence of blasphemy. The Fair Employment and Treatment Order (Northern Ireland) 1998 prohibits religious discrimination.

ARTICLE 11 - Freedom of expression and information

Article 11 says:

- 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.*
- 2. The freedom and pluralism of the media shall be respected.*

As the explanation to the Charter says, the meaning and scope of this article corresponds to Article 10 ECHR (freedom of expression). The ECHR is given further effect in domestic law by the Human Rights Act 1998 and through the devolution statutes. As such, the right in Article 11 of the Charter will continue to be protected in the UK by virtue of the Human Rights Act 1998 and the devolution statutes.

The right to freedom of expression is a general principle of EU law which was part of EU law before the Charter came into force, recognised in cases such as *Oyowe* (Case C-100/88). As explained in the introductory text, the Bill retains the general principles of EU law for interpretation purposes and so after exit our courts will be required to interpret retained EU law consistently with the general principle set out in Article 11, so far as it is possible to do so.

More generally, freedom of speech is also protected under existing domestic law. Legislation such as the Contempt of Court Act 1981 (which also extends to Northern Ireland) balances freedom of expression with right to fair trial; the Education (No 2) Act 1986 protects freedom of speech within law for staff, students and speakers at universities in England and Wales; and the Theatre Act 1968 abolished censorship on theatre. Freedom of speech is also protected under the common law.

ARTICLE 12 - Freedom of assembly and of association

Article 12 says:

- 1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.*
- 2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.*

The explanation to the Charter notes that this right is protected under Article 11 of the ECHR (freedom of assembly and of association), however the scope of this right is wider because it applies at a European level as well as the national level. Article 12(2) is specifically aimed at freedom of assembly for political parties at an EU level. This area will no longer be relevant for the UK after withdrawal.

The ECHR is given further effect in domestic law by the Human Rights Act 1998 and through the devolution statutes. As such, the right to freedom of assembly and association will continue to be protected in the UK by virtue of the Human Rights Act 1998 and the devolution statutes.

Further, in cases such as *Bosman* (Case C-415/93) and *Union Syndicale* (Case C-175/73), the CJEU has recognised that the right to freedom of association and the right to freedom of trade union activity are general principles which exist independently of the Charter. As explained in the introductory text, the Bill retains the general principles of EU law - including freedom of association - for interpretation purposes and so after exit our courts will be required to interpret retained EU law consistently with the general principle set out in Article 12, so far as it is possible to do so.

More generally, domestic legislation also regulates the right to freedom of assembly and association. For example, the Public Order Act 1986 created offences in relation to public order. The Civil Government (Scotland) Act 1982 sets out provisions in respect of public processions. Peaceful assembly has been found to be "ordinary and reasonable" use of a public highway by the House of Lords in *DPP v Jones*. The Trade Union Act 1871 and Employment Act 1990, consolidated in the Trade Union and Labour Relations (Consolidation) Act 1992 and further Trade Union Act 2016, give the right to join a trade union and the right not to join a trade union. In addition, in Northern Ireland legislation has been passed such as the Trade Union and Labour Relations (Northern Ireland) Order 1995.

ARTICLE 13 - Freedom of the Arts and the Sciences

Article 13 says:

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

As the explanations to the Charter illustrate, this right is simply one aspect of the right protected under Article 10 of the ECHR (freedom of expression) and the European Court of Human Rights has held that Article 10 of the ECHR applies to expression in both artistic and scientific contexts (*Muller v Switzerland*, App. No. 10737/84, judgment of 24 May 1988; *Hertel v Switzerland*, App. No. 25181/94, (1999) 28 EHRR 534).

The ECHR is given further effect in domestic law by the Human Rights Act 1998 and through the devolution statutes. As such, the right in Article 13 of the Charter will continue to be protected in the UK by virtue of the Human Rights Act 1998 and the devolution statutes.

ARTICLE 14 - Right to Education

Article 14 says:

- 1. Everyone has the right to education and to have access to vocational and continuing training.*
- 2. This right includes the possibility to receive free compulsory education.*
- 3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.*

The explanation says that the substance of Article 14 corresponds to Article 2 of Protocol 1 ECHR (right to education). It is wider only in that it also covers access to vocational and continuing training, reflecting the common constitutional traditions of the member states and drawing on the European Social Charter (ESC).

The ECHR is given further effect in domestic law by the Human Rights Act 1998 and through the devolution statutes. As such, the right to education will continue to be protected in the UK by virtue of the Human Rights Act 1998 and the devolution statutes. The free movement of workers regulation (regulation 492/2011) gives EU migrant workers and their family members the same rights of access to vocational training under the same conditions as nationals of the member state. This regulation will be converted into UK law by the Bill.

The explanation to the Charter makes it clear that the freedom to found educational establishments in Article 14(3) is simply an aspect of the more general right to set up a business, that has long been recognised in the CJEU's case law (see Article 16).

More generally, access to education is also well provided for in domestic law. Education is a devolved competence and delivered by the devolved administrations for the most part. For example, the Education Act 1996 places duties on local authorities to ensure that efficient, full time, suitable education is available, and creates mechanisms to identify and deal with cases where children are not being adequately educated. Sections 450 to 458 of the Education Act 1996 and section 1(9) Academies Act 2010 contain obligations in respect of the provision of free education at state-funded schools. The School Standards and Framework Act 1998 and academy schools' funding agreements require parents' choice of state-funded school to be complied with as far as that is consistent with efficient education and use of resources. The Education (Scotland) Act 1980, the Standards in Scotland's Schools Act 2000, the Scottish Schools (Parental Involvement) Act 2006 and the

Education (Scotland) Act 2016, deal with rights to education and parental involvement in the education of children. Article 3 of the Education Reform (Northern Ireland) Order 1986 imposes a general duty on the Department of Education in Northern Ireland to promote the education of the people of Northern Ireland and to secure the effective execution by the Education Authority and other bodies of the policy in relation to the provision of the education service. Article 5(2) of the Education and Libraries (Northern Ireland) Order 1986 imposes a duty on the Education Authority to contribute towards the spiritual, moral, cultural and physical development of the community by securing efficient primary education and secondary education.

ARTICLE 15 - Freedom to choose an occupation and the right to engage in work

Article 15 says:

- 1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.*
- 2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any member state.*
- 3. Nationals of third countries who are authorised to work in the territories of the member states are entitled to working conditions equivalent to those of citizens of the Union.*

The explanation to the Charter says Article 15 reflects existing provisions of EU law: the longstanding CJEU case law on the right to pursue a trade or profession is part of EU law; and the freedom of movement for workers, freedom of establishment and freedom to provide services guaranteed by the TFEU.

The freedom to choose an occupation exists independently of the Charter, as a general principle of EU law which was established in cases such as *Nold* (Case C-4/73) and *Hauer* (Case C-44/79). As explained in the introductory text, the Bill retains the general principles of EU law for interpretation purposes and so after exit our courts will be required to interpret retained EU law consistently with the general principle recognised by Article 15, so far as it is possible to do so.

Insofar as the Treaty provisions on which Article 15 have been held to contain directly effective rights, then by virtue of clause 4 of the Bill these rights will continue to be recognised and available to the extent they were available immediately before exit.

ARTICLE 16 - Freedom to conduct a business

Article 16 says:

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

The explanation to the Charter says that this article reflects the longstanding CJEU case law on the freedom to exercise an economic or commercial activity, the freedom of contract and free competition exists independently of the Charter.

The right to carry on economic activity exists independently of the Charter, as a general principle of EU law established in cases such as Eridiana (Case C-230/78). As explained in the introductory text, the Bill retains the general principles of EU law for interpretation purposes and so after exit our courts will be required to interpret retained EU law consistently with the general principle set out in Article 16, so far as it is possible to do so.

The ability to conduct a business is provided for in UK law by a facilitative framework with an absence of restrictions on setting up a business. For example, the Companies Acts allow for the registration of companies subject to complying with requirements, while UK competition law largely mirrors that which applies at the EU level to provide fairness and a level playing field for companies operating in the UK.

ARTICLE 17 - Right to Property

Article 17 says:

- 1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.*
- 2. Intellectual property shall be protected.*

As the explanation to the Charter says, the meaning and scope of this article corresponds to Article 1 of Protocol 1 ECHR (protection of property). The right to protection of intellectual property is one aspect of that right. The ECHR is given further effect in domestic law by the Human Rights Act 1998 and the through devolution statutes. As such, the right in Article 11 of the Charter will continue to be protected in the UK by virtue of the Human Rights Act 1998 and the devolution statutes.

The right to property exists independently of the Charter as a general principle, recognised in cases such as *Hauer* (Case C-44/79). The CJEU confirmed in *Laserdisken* (Case C-479/04) that intellectual property rights form part of the right to property recognised in EU law. As explained in the introductory text, the Bill retains the general principles of EU law for interpretation purposes and so after exit our courts will be required to interpret retained EU law consistently with the general principle set out in Article 17, so far as it is possible to do so.

The right to property is also protected through domestic legislation. For example, the Theft Act 1968 and the Copyright, Designs and Patents Act 1988 (which extends across the UK) and related legislation offer protection for both physical property and intellectual property.

ARTICLE 18 - Right to Asylum

Article 18 says:

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union ('the Treaties').

The explanation to the Charter says that this article reflects Article 78(1) TFEU, and it is clear that the right goes no further than the rights created by EU legislation in this area. The explanation also makes it clear that if the UK has not opted into EU legislation in this area, then the right does not apply to the UK.

UK law will continue to provide for asylum through domestic law, including for example the Nationality, Immigration and Asylum Act 2002, the Asylum and Immigration Appeals Act 1993 and the Immigration Rules. Moreover the UK is a party to the 1951 Refugee Convention and the 1967 Protocol.

ARTICLE 19 - Protection in the event of removal, expulsion or extradition

Article 19 says:

1. *Collective expulsions are prohibited.*
2. *No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.*

The explanation to the Charter says that the prohibition on collective expulsions in Article 19(1) directly corresponds to the right in Article 4 of Protocol 4 to the ECHR, drawing on Article 13 of the International Covenant on Civil and Political Rights; and the prohibition on expulsion in Article 19(2) directly corresponds to Article 3 ECHR (prohibition of torture).

The UK has not ratified Protocol 4 to the ECHR. However, the European Court of Human Rights has found in *Hirsi Jamaa and Others v Italy* (Application no. 27765/09) that Article 13 ECHR (right to an effective remedy) must involve a fair and effective procedure by which a person's Article 3 ECHR claim is considered individually.

Article 3 ECHR (prohibition of torture) is given further effect in domestic law by the Human Rights Act 1998 and the devolution statutes. Although Article 13 is not listed in Schedule 1 to the Human Rights Act 1998, that Act as a whole ensures the UK's compliance with Article 13 and domestic courts are under a duty to take into account relevant case law of the European Court of Human Rights.

Moreover, the UK is a party to the International Covenant on Civil and Political Rights and the 1951 Refugee Convention.

TITLE III - EQUALITY

ARTICLE 20 - Equality before the law

Article 20 says:

Everyone is equal before the law.

The right in Article 20 reaffirms the long-standing EU general principle of equal treatment. As set out in the explanations on the Charter “this Article corresponds to a general principle of law which is included in all European constitutions.”

The right to equal treatment exists independently of the Charter as a general principle, recognised in cases such as *Chatzi* (Case C-149/10). As explained in the introductory text, the Bill retains the general principles of EU law for interpretation purposes and so after exit our courts will be required to interpret retained EU law consistently with the general principle set out in Article 20, so far as it is possible to do so. EU-derived legislation which is relevant to this principle will also be preserved by the Bill - for example, protections contained in equalities legislation.

In the domestic law of the UK, the principle that everyone is equal before the law is reflected in the rule of law, one of the longest established fundamental principles of the UK’s constitution. The common law requires public authorities to act reasonably when exercising their powers and this includes a requirement not to discriminate arbitrarily between different cases. There are also protections in UK equalities legislation which go further in certain respects than those required by EU law - for example section 29 of the Equality Act 2010 prohibits discrimination on the grounds of a protected characteristic by public authorities in the exercise of a public function. This would include, for example, a decision by a public authority about whether to grant a licence or about the conditions to impose on a licence. Other domestic legislation is also relevant - for example, Article 14 of the ECHR requires that all of the other rights and freedoms contained in the ECHR are protected and applied without discrimination on the grounds set out in Article 14; Article 14 is given further effect in UK law by the Human Rights Act 1998. For instance, the Scotland Act 1998 also makes clear that the Scottish Parliament cannot legislate incompatibly with the ECHR which would include Article 14 of the ECHR. The same is true of the Northern Ireland Assembly and the National Assembly of Wales.

ARTICLE 21 - Non-Discrimination

Article 21 says:

- 1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.*
- 2. Within the scope of application of the Treaties and without prejudice to any of its specific provisions, any discrimination on the grounds of nationality shall be prohibited.*

Article 21(1) is a more specific expression of the general right in Article 20. As the explanations make clear it only addresses discrimination by the institutions and bodies of the EU themselves, when exercising powers conferred under the Treaties, and by member states only when they are implementing EU law. Paragraph 1 therefore does not alter the extent of powers granted under Article 19 TFEU³ nor the interpretation given to that Article.

It is well-established in the case law of the CJEU that the right to not be discriminated against on the grounds of sex is a general principle of EU law. Other specific grounds in relation to which non-discrimination has been relied on before the courts as a general principle of EU law include gender reassignment and age. As explained in the introductory text, the Bill retains the general principles of EU law for interpretation purposes and so after exit our courts will be required to interpret retained EU law consistently with Article 21(1) so far as it reflects a general principle of EU law and so far as it is possible to do so.

EU-derived domestic legislation which is relevant to Article 21(1) will also continue to form part of domestic law after exit. This includes the Equality Acts 2006 and 2010 and equivalent legislation in Northern Ireland. A list of Northern Irish anti-discrimination legislation can be found on the Equality Commission for Northern Ireland's website here: <http://www.equalityni.org/Footer-Links/Legislation> This legislation implements the Race Directive (Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin), the Employment Framework Directive (Council Directive

³ Article 19(1) provides "Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation."

2000/78/EC establishing a general framework for equal treatment in employment and occupation), the Gender Directive (Council Directive 2004/113/EC on the implementation of the principle of equal treatment in the provision of goods, facilities and services irrespective of gender) and the Recast Gender Directive (Council Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation). The case law which relates to these instruments will also be preserved by the EU (Withdrawal) Bill .

Other domestic legislation also covers some of the same ground - for example, Article 14 of the ECHR (prohibition of discrimination), which provides for a right not to be discriminated against in respect of the other rights set out in the ECHR. Article 14 which is given further effect in the domestic law of the UK law via the Human Rights Act 1998 and the devolution statutes requires that all of the other rights and freedoms contained in the ECHR must be protected and applied without discrimination on the grounds set out in Article 14. The Scotland Act 1998 also makes clear that the Scottish Parliament cannot legislate incompatibly with the ECHR which would include Article 14 of the ECHR. For other relevant examples see the text on Article 20 above.

Article 21(2) simply restates Article 18 TFEU and, as Article 52(2) confirms, it is subject to the same limits. Article 21(2) does not therefore provide the basis for a challenge where Article 18 does not. The right set out in Article 18 TFEU has been held to be directly effective. By virtue of clause 4 of the Bill the right in Article 18 will continue to be recognised and available to the extent it was immediately before exit, subject to amendment under the powers contained in the Bill or other legislation.

ARTICLE 22 - Cultural, Religious and Linguistic Diversity

Article 22 says:

The Union shall respect cultural, religious and linguistic diversity.

Article 22 sets out a principle to guide the EU institutions when they legislate, rather than an enforceable right. As such, the non-incorporation of the Charter will not remove a freestanding right of challenge for litigants, since Article 22 does not confer such a right.

In relation to Northern Ireland, in the section of the Belfast (Good Friday) Agreement on Rights, Safeguards and Equality of Opportunity, all participants recognised *“the importance of respect, understanding and tolerance in relation to linguistic diversity, including in Northern Ireland, the Irish language, Ulster-Scots and the languages of the various ethnic communities, all of which are part of the cultural wealth of the island of Ireland.”*

The legislative competence for the Welsh language has been devolved to the National Assembly for Wales. The Assembly has used that competence to pass the Welsh Language (Wales) Measure 2011 which creates a Welsh Language Commissioner and a Welsh Language Tribunal, as well as creating a new regime of Welsh language standards for public bodies. Although the Assembly's 2011 Measure has largely replaced it, the Welsh Language Act that was passed by Parliament in 1993 nevertheless still includes protections. These include the principle that the English and Welsh languages should be treated *“on the basis of equality”*, as well as the right to use Welsh in legal proceedings in Wales. The Gaelic Language (Scotland) Act 2005 protects the Scots Gaelic language.

The UK Government signed the European Charter for Regional or Minority Languages on 2nd March 2000 and it was ratified on 27th March 2001. Part II sets out objectives and principles which parties to the Charter commit to applying, in respect of regional or minority languages recognised by the state as falling within the definition. Part III sets out a range of specific measures for the promotion of the use of regional or minority languages in public life, from which parties to the Charter must select at least 35 provisions which will apply to specified languages within their territory. The UK has declared that Ulster Scots, Scots Gaelic, Irish and Welsh are recognised as regional or minority languages in the UK, so that the objectives and principles in Part II of the Charter apply to these languages.

ARTICLE 23 - Equal treatment between men and women

Article 23 says:

- 1. Equality between men and women must be ensured in all areas, including employment, work and pay.*
- 2. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the underrepresented sex.*

In part, Article 23 reflects the general principle of equal treatment for men and women. Article 23(1) also restates what is in existing EU legislation. Some of that legislation - such as Article 157 TFEU and Directive 2006/54 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation - contains rights. Other parts - such as Article 3(3) TEU and Article 8 TFEU - contain principles. Article 23(2) replicates Article 157(4) TFEU. Article 52(2) of the Charter confirms that Article 23 of the Charter has the same meaning as the corresponding provisions of EU law.

The rights set out in Article 23 will form part of retained EU law after exit. For example, the right to equal pay in Article 157(1) and (2) TFEU has been implemented in domestic law through the Equality Act 2010 and the Equal Pay Act (Northern Ireland) 1970. In addition, the right to equal pay in Article 157 has been held to be directly effective and so that right will also be converted into UK law by clause 4 of the Bill. The EU directives on equal treatment between men and women in employment and occupation and in the provision of goods and services have also been implemented in domestic legislation - in the Equality Act 2010 and the Sex Discrimination (Northern Ireland) Order 1976 - which will continue to form part of domestic law after exit. Finally, as explained in the introductory text, the Bill retains the general principles of EU law for interpretation purposes and so after exit courts will be required to interpret retained EU law consistently with the general principle reflected in Article 23(1), so far as it is possible to do so.

Other domestic law which relates to the principle of equal treatment and which is not derived from EU law will also continue to be available after exit. For example, the public sector equality duty places a duty on Ministers and other public bodies in the UK to have regard to the need to eliminate unlawful discrimination, harassment and victimisation and to promote equality of opportunity when exercising their functions. In addition the common law requires that in exercising their powers public bodies act reasonably and this includes a requirement not to discriminate arbitrarily between different groups. A further example is Article 14 of the ECHR which requires that all of the rights and freedoms contained in the ECHR must be protected and applied

without discrimination. Article 14 is given further effect in the domestic law of the UK by the Human Rights Act 1998 and through the devolution statutes.

ARTICLE 24 - Rights of the Child

Article 24 says:

1. *Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.*
2. *In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.*
3. *Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.*

The explanation says that this article reflects provisions in the UN Convention on the Rights of the Child (UNCRC), which all EU member states have ratified.

The CJEU has held that the UNCRC, referred to in the explanations to the Charter, is one of the international instruments for the protection of human rights of which it takes account in applying the general principles of EU law. The CJEU has also held that certain rights, such as the right to maintain a relationship with both parents, and the right for children to express views and have them taken into account, are general principles of EU law (*HH v Deputy Prosecutor of the Italian Republic, Genoa* [2012]). As explained in the introductory text, the Bill retains the general principles of EU law for interpretation purposes: which would include the general principles relating to and applied in light of the rights of the child. Therefore, after exit our courts will be required to interpret retained EU law consistently with these general principles, so far as it is possible to do so.

As explained in the introductory text, the UK's commitment to the UNCRC is already, and continues to be, reflected in domestic legislation and practice. For example, the Children Acts 1989 and 2004 set out a range of duties to safeguard and promote the welfare of children. Section 11 of the Children Act 2004 places duties on a range of organisations, including local authorities, the police, health services and a variety of other agencies, to ensure their functions, and any services that they contract out to others, are discharged having regard to the need to safeguard and promote the welfare of children. The Children (Northern Ireland) Order 1995, the Cooperation in Children's Services Act (Northern Ireland) 2015 and the Children (Scotland) Act 1995, and the Family Law (Scotland) Act 1985 and the Rights of Children and Young People (Wales) Measure 2011 also govern the care, upbringing and protection of children. The Welsh Assembly has made provision for the Children's Commissioner for Wales, under the devolved competence powers.

In addition, Article 8 ECHR (right to respect for private and family life) is often relevant when children and their relationship with their family is under consideration. The ECHR is given further effect in UK law via the Human Rights Act 1998 and through the devolution statutes. The right to respect for private and family life will continue to be protected in the UK by virtue of the Human Rights Act 1998 and the devolution statutes; and domestic courts will continue to take into account the case law of the European Court of Human Rights which has drawn on the UNCRC when interpreting Article 8 ECHR.

ARTICLE 25 - Rights of the Elderly

Article 25 says:

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

The explanations to the Charter make clear that this is a principle to guide the EU institutions when they legislate, rather than an enforceable right. As such, the non-incorporation of the Charter will not remove a freestanding right of challenge for litigants, since Article 25 does not confer such a right.

The UK will continue to have a range of domestic protections for the rights of the elderly. For example, age-based discrimination is prohibited in the Equality Act 2010 and the Employment Equality (Age) Regulations (Northern Ireland) Act 2006. Section 75 of the Northern Ireland Act 1998 imposes a duty on public authorities to have due regard to promote equality of opportunity between persons of different ages. In addition the Commissioner for Older People (Northern Ireland) Act 2011 supports the rights of the elderly. The Welsh Assembly has made provision for the Older People's Commissioner in Wales, under the devolved competence powers. The Health and Social Care Act 2008 provides that private and voluntary sector organisations in England providing residential care services under contract to local authorities are bound by the Human Rights Act 1998.

In addition, Articles 3, 8 and 14 ECHR are particularly relevant to the rights of the elderly. The ECHR is given further effect in the domestic law of the UK via the Human Rights Act 1998 and through the devolution statutes. As such the right of the elderly will continue to be protected in the UK by virtue of the Human Rights Act 1998 and through the devolution statutes.

ARTICLE 26 - Integration of Persons With Disabilities

Article 26 says:

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

As the explanations to the Charter say, Article 26 is based on the European Social Charter and also draws on the Community Charter of the Fundamental Social Rights of Workers. Article 26 sets out a principle to guide the EU institutions when they legislate, rather than an enforceable right. In *Glatzel* (Case C-356/12), the Court confirmed that Article 26 is a principle, and also held that since the article “*does not require the EU legislature to adopt any specific measure... [it] cannot by itself confer on individuals a subjective right which they may invoke as such...*”⁴ As such, the non-incorporation of the Charter will not remove a freestanding right of challenge for litigants, since Article 26 does not confer such a right.

The rights of persons with disabilities are protected in the domestic law of the UK, for example through the Equality Act 2010 and, in Northern Ireland, the Disability Discrimination Act 1995 and the Special Educational Needs and Disability (NI) Order 2005. EU legislation in this area, for example Regulation (EC) No 1107/2006 on the rights of disabled persons and persons with reduced mobility when travelling by air, will also be converted into domestic law by the Bill.

⁴ Paragraph 78.

TITLE IV - SOLIDARITY

ARTICLE 27- Workers' right to information and consultation within the undertaking

Article 27 says:

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

As mentioned in the explanation on Article 27, this Article simply reflects existing EU legislation and leaves it entirely to Member States to decide whether to give any rights going beyond that legislation. There is a considerable Union acquis in this field: Articles 154 and 155 of the Treaty on the Functioning of the European Union, and directives 2002/14/EC (general framework for informing and consulting employees in the European Community), 98/59/EC (collective redundancies), 2001/23/EC (transfers of undertakings) and 94/45/EC (European works councils).

Article 27 of the Charter provides an example of a provision which does not, on its own, confer enforceable rights on individuals (see *Association de Médiation Sociale* (Case C-176/12 2012)).

In the UK, the Information and Consultation of Employees Regulations 2004 and the Information and Consultation of Employees Regulations (Northern Ireland) 2005 (which implement Directive 2002/14/EC) give effect to the right set out in Article 27. These regulations will continue to form part of the domestic law of the UK as retained EU law after exit and the Bill preserves any case law which is relevant to their interpretation.

ARTICLE 28 - Right of collective bargaining and action

Article 28 says:

Workers and employers, or their prospective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interest, including strike action.

As the explanation on Article 28 says, this Article is based on the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers.

The right of collective action, including the right to strike, is part of EU law independently of the Charter. It has been recognised as a general principle of EU law in cases such as *Viking Line* (Case C-438/05) and *Laval* (Case C-341/05). As explained in the introductory text, the Bill retains the general principles of EU law for interpretative purposes and so after exit our courts will be required to interpret retained EU law consistently with Article 28 so far as it reflects a general principle of EU law and so far as it is possible to do so.

Other domestic legislation also covers some of the same ground. For example, the right of collective action has been recognised by the European Court of Human Rights as one of the elements of trade union rights laid down by Article 11 of the ECHR. The ECHR is given further effect in domestic law of the UK via the Human Rights Act 1998 and through the devolution statutes. As such the right to collective action will continue to be protected in the UK by virtue of the Human Rights Act 1998 and the devolution statutes. For example, the Scotland Act 1998 also makes clear that the Scottish Parliament cannot legislate incompatibly with the ECHR which would include Article 11 of the ECHR. Other relevant domestic legislation includes the Trade Union and Labour Relations (Consolidation) Act 1992 and the Trade Union and Labour Relations (Northern Ireland) Order 1995.

ARTICLE 29- Right of access to placement services

Article 29 says:

Everyone has the right of access to a free placement service.

As the explanations on Article 29 say, this Article is based on the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers. The term 'placement services' refers to job placement services such as Jobcentre Plus.

Article 29 sets out a principle to guide the EU institutions when they legislate, rather than an enforceable right. As such, the non-incorporation of the Charter will not remove a freestanding right of challenge for litigants, since Article 29 does not confer such a right.

This principle is reflected in EU legislation that will form part of retained EU law under the Bill (see, for example, Article 5 of Regulation 492/2011 on freedom of movement for workers within the Union). Case law that is relevant to the interpretation of those regulations will also be preserved by the Bill.

ARTICLE 30 – Protection in the event of unjustified dismissal

Article 30 says:

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

As the explanation on Article 30 makes clear, this Article simply reflects existing EU legislation - for example, Directive 2001/23/EC on the safeguarding of employees' rights in the event of transfers of undertakings, and Directive 80/987/EEC on the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC - and leaves it entirely to the member states to decide whether to give any rights going beyond that legislation.

Article 30 does not, on its own, confer enforceable rights on individuals (applying *Association de Médiation Sociale* (Case C-176/12 2012)).

The directives referred to above have been implemented in domestic law, for example through the Transfer of Undertakings (Protection of Employment) Regulations 2006. These regulations apply UK wide, though amendments made in 2014 only apply to Great Britain, and this domestic legislation will be retained by the Bill. The case law that relates to these instruments will also be retained.

More generally, in the domestic law of the UK, protection in the event of unfair dismissal is provided by domestic legislation such as the Employment Rights Act 1996 and Employment Rights (Northern Ireland) Order 1996, and it is possible for employees to bring claims in the employment tribunal. Moreover, the UK is a party to the International Labour Organisation Fundamental Conventions, in particular the Discrimination (Employment and Occupation) Convention 1958.

ARTICLE 31 - Fair and just working conditions

Article 31 says:

1. *Every worker has the right to working conditions which respect his or her health, safety and dignity.*
2. *Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.*

As the explanations say, paragraph 1 of this Article is based on Directive 89/391/EEC, on the introduction of measures to encourage improvements in the safety and health of workers at work; paragraph 2 is based on Directive 2003/88/EC concerning certain aspects of the organisation of working time.

Article 31 does not contain a directly enforceable right (applying *Association de Médiation Sociale* (Case C-176/12 2012)). The directives on which this Article is based have been implemented in domestic law, for example through the Working Time Regulations 1998 and the Management of Health and Safety at Work Regulations 1999 and in Northern Ireland by the Health and Safety Work (Northern Ireland) Order 1978 and the Working Time Regulations (Northern Ireland) 2016. This domestic legislation will be retained by the Bill. Case law that relates to the interpretation of these regulations will also be retained under this Bill.

More generally in UK law, protection from unfair dismissal is provided through the Employment Rights Act 1996 and it is possible for employees to bring claims in the employment tribunal. Moreover, the UK is a party to the International Labour Organisation Fundamental Conventions, in particular the Discrimination (Employment and Occupation) Convention 1958.

ARTICLE 32 – Prohibition of child labour and protection of young people at work

Article 32 says:

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

As the explanations to the Charter say, Article 32 is based on Directive 94/33/EC on the protection of young people at work. Directive 94/33/EC has been implemented in domestic law by, for example, provisions of the Children and Young Persons Act 1933, subsequently updated in 1998, and the rights protected in that legislation, will be retained by the Bill. The case law which relates to these instruments will also be preserved by the Bill.

More generally, the rights and best interests of the child are protected in England primarily through the Children Act 1989, the Adoption and Children Act 2002, the Children and Young Persons Act 1933, and in common law. Scotland, Wales and Northern Ireland have their own measures for protection of children's rights, including the Children (Scotland) Act 1995, and the Employment of Children Regulations (Northern Ireland) 1996. Moreover, the UK is a party to the United Nations Convention on the Rights of the Child.

ARTICLE 33- Family and professional life

Article 33 says:

- 1. The family shall enjoy legal, economic and social protection.*
- 2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.*

As the explanations to the Charter say, Article 33 is based on Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding and Directive 96/34/EC on the framework agreement on parental leave. The explanation to Article 52 confirms that Article 33 contains elements of a right and of a principle.

Article 33(1) sets out a principle, to guide the EU institutions when they legislate, rather than an enforceable right. As such, the non-incorporation of the Charter will not remove a freestanding right of challenge for litigants, since Article 33(1) does not confer such a right.

The enforceable rights set out in Article 33(2) come from the directives referred to in the explanation which have been implemented in domestic law, including through the Employment Rights Act 1996 and legislation made under that Act including the Maternity and Parental Leave Regulations 1999. UK employment law already goes further than many of the standards set out in EU legislation and the Government has committed to protect and enhance the rights people have at work. That EU derived legislation and the rights it protects will be retained by the Bill. Case law relating to the directives will also be retained.

ARTICLE 34 - Social security and social assistance

Article 34 says:

- 1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.*
- 2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.*
- 3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national law and practices.*

As the explanation on Article 34 says, this is based on Articles 153 and 156 of the Treaty on the Functioning of the European Union. It reflects the rules arising from the EU Social Security Coordination Regulations 883/2004 and its Implementing Regulation 987/2009 which are the successor Regulations to Regulation No 1408/71 and its Implementing Regulation 574/1972. Also related to this is Regulation 492/2011, on free movement of workers, which codified Regulation No 1612/68.

Article 34 as a whole is limited by reference to EU and national law, which means that Article 34 does not create a general entitlement to social security or welfare benefits where there is no EU or domestic law right to them. EU social security is based on the coordination rather than the harmonisation of national law. Each country remains responsible for its own legislation determining what benefits it pays and to whom.

The explanation to Article 52 confirms that Article 34 contains elements of a right and of a principle.

Article 34(1) and (3) set out principles, to guide the EU institutions when they legislate, rather than enforceable rights. As such, the non-incorporation of the Charter will not remove a freestanding right of challenge for litigants, since Article 34 (1) and (3) do not confer such a right.

The only enforceable right is Article 34(2) which simply restates rights that arise from long-standing provisions on free movement within the EU. The EU Social Security Coordination Regulations and the Free Movement of Workers Regulation referred to above, for example, are directly applicable and will therefore be retained by the Bill. The case law which relates to these instruments will also be preserved by the Bill.

ARTICLE 35 - Health care

Article 35 says:

Everyone has the right of access to preventative health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.

As the explanation on Article 35 says, the principles set out in this Article are based on Article 168 of the Treaty on the Functioning of the European Union, and on the European Social Charter.

Article 35 sets out principles to guide the EU institutions when they legislate rather than enforceable rights. As such, the non-incorporation of the Charter will not remove a freestanding right of challenge for litigants, since Article 35 does not confer such a right. The NHS has been ranked the best healthcare system out of 11 wealthy nations (including the United States, the Netherlands, Norway and Sweden), as analysed by the Commonwealth Fund. The delivery of public health protection is largely a devolved competence.

As a principle it is a feature of EU legislation that will form part of retained EU law after exit. In addition, our courts will continue to be able to look at the relevant Treaty provision when interpreting retained EU law and so this principle will continue to be relevant in that context.

ARTICLE 36 - Access to services of general economic interest

Article 36 says:

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union.

The explanation on Article 36 says:

This Article is fully in line with Article 14 of the Treaty on the Functioning of the European Union and does not create any new right. It merely sets out the principle of respect by the Union for the access to services of general economic interest as provided for by national provisions, when those provisions are compatible with Union law.

Article 36 sets out a principle to guide the EU and does not contain any enforceable rights. The relevance of this principle will in any event largely fall away once the UK leaves the EU.

ARTICLE 37 - Environmental Protection

Article 37 says:

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

The explanation of Article 52(5) of the Charter lists Article 37 as an example of a principle rather than a right. As such, Article 37 sets out a required approach for EU policy, including the development of EU law, rather than conferring a fully enforceable right. As such, the non-incorporation of the Charter will not remove a freestanding right of challenge for litigants. The explanation also says that Article 37 is based on Articles 11 and 191 TFEU and Article 3(3) TEU.

Environmental protection is part of EU law independently of the Charter. There are numerous pieces of EU legislation providing for a high level of environmental protection, including on waste, water, chemicals, air quality and habitats. These will be retained under the Bill as will the case law which relates to them. Examples include legislation on chemicals and invasive species. and case law on waste and habitats.

In addition our courts will continue to be able to look at the relevant treaty legal base when interpreting retained EU law and so these principles will continue to be relevant to the interpretation of retained EU law in the field of environmental protection after exit.

The ideas behind the precautionary principle, the polluter pays principle and other environmental principles are included in Principles 15 and 16 respectively of the Rio Declaration on Environment and Development 1992 (“Rio Principles”), a political declaration to which the UK is a signatory. These, as well as the other principles, are also features of multilateral environmental agreements to which the UK is a party. For example, the Gothenburg Protocol on air pollution applies the precautionary principle.

ARTICLE 38 - Consumer protection

Article 38 says:

Union policies shall ensure a high level of consumer protection.

As the explanations say, this Article is based on Article 169 of the Treaty on the Functioning of the European Union, and sets out a principle rather than a right. As such, the non-incorporation of the Charter will not remove a freestanding right of challenge for litigants.

Our courts will continue to be able to look at the relevant Treaty provisions and related case law when interpreting retained EU law and so this principle will continue to be relevant to the interpretation of retained EU law.

More generally, in the UK consumer rights are protected by a wide variety of domestic legislation such as the Consumer Rights Act 2015.

TITLE V - CITIZENS' RIGHTS

As explained in the introductory text, Articles 39 to 45 generally reflect provisions in the Treaties and secondary legislation that depend on our being a member state.

ARTICLE 39 - Right to vote and to stand as a candidate at elections to the European Parliament

Article 39 says:

- 1. Every Citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the member state in which he or she resides, under the same conditions as nationals of the State.*
- 2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.*

The UK is leaving the European Union and so will not have representation at the European Parliament.

In the absence of elections to the European Parliament, Article 39 will not make sense in the UK following withdrawal. The Bill repeals some of the domestic legislation relating to elections to the European Parliament (see Schedule 9 to the Bill).

ARTICLE 40- Right to vote and to stand as a candidate at municipal elections

Article 40 says:

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the member state in which he or she resides under the same conditions as nationals of the State.

Subject to any agreement with the EU on the rights of EU nationals in the UK, and of UK nationals in EU countries, it will be for Parliament and, where appropriate, the devolved legislatures, to determine the franchise for local and devolved elections.

ARTICLE 41 - Right to good administration

Article 41 says:

- 1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.*
- 2. This right includes:*
 - (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;*
 - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;*
 - (c) the obligation of the administration to give reasons for its decisions.*
- 3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the member states.*
- 4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.*

Article 41 is directed solely to the institutions, bodies, offices and agencies of the EU.

It will cease to have any relevance to the operation of UK law after exit because the powers vested in EU agencies, bodies and offices will be returned to the UK and all of the normal domestic rules about the exercise of such powers by public bodies will apply.

The right to good administration applies to any natural and legal person, and so the UK's withdrawal from the EU will not prevent UK nationals or businesses from vindicating that right where they have dealings with the EU institutions.

ARTICLE 42 - Right of access to documents

Article 42 says:

Any citizen of the Union, and any natural or legal person residing or having its registered office in a member state, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.

The right of access to documents only applies to documents of EU institutions. The right applies to citizens of the Union, or residents within the Union.

Any natural person residing in the EU (including UK nationals) or legal person having its registered office in the EU after withdrawal will have the same right of access to documents as at present.

In the UK a variety of legal regimes, including the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004, provide public access to information held by public authorities subject to a number of exemptions. These regimes will not be affected by the UK's withdrawal from the EU.

ARTICLE 43 – European Ombudsman

Article 43 says:

Any citizen of the Union and any natural or legal person residing or having its registered office in a member state has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.

The right to refer cases of maladministration to the European Ombudsman only applies to activities of the EU institutions, bodies, offices or agencies (with the exception of the CJEU).

Any natural person residing in the EU (including UK nationals) or legal person having its registered office in the EU after withdrawal will have the same right to refer cases to the European Ombudsman as at present.

ARTICLE 44- Right to petition

Article 44 says:

Any citizen of the Union and any natural or legal person residing or having its registered office in a member state has the right to petition the European Parliament.

The right to petition the European Parliament will continue to exist for any natural person residing in the EU (including UK nationals) or legal person having its registered office in the EU, and for EU citizens resident in the UK after the UK's withdrawal.

ARTICLE 45 – Freedom of movement and of residence

Article 45 says:

- 1. Every citizen of the Union has the right to move and reside freely within the territory of the member states.*
- 2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a member state.*

As the explanations say, paragraph 1 of this Article reflects Article 21(1) TFEU. Article 21(2) refers to the power granted to the Union by the TFEU which are predicated on the EU developing policies. The explanation confirms that the right in this paragraph only exists if and to the extent that the EU institutions exercise that power.

The right set out in Article 21(1) TFEU has been held to be directly effective. By virtue of clause 4 of the Bill the right in Article 21(1) will continue to be recognised and available to the extent it was immediately before exit.

ARTICLE 46– Diplomatic and consular protection

Article 46 says:

Every citizen of the Union shall, in the territory of a third country in which the member state of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any member state, on the same conditions as the nationals of that member states.

This Article reflects Articles 20(2)(c) and 23 of the Treaty on the Functioning of the European Union. UK consular assistance is provided under the Royal Prerogative. Mutual consular assistance by the UK or an EU member state, for EU and UK nationals in the territory of a third country in which they are not represented, following the UK's withdrawal from the EU, will be subject to future discussion and agreement with the EU and its member states.

TITLE VI - JUSTICE

ARTICLE 47 - Right to an effective remedy and a fair trial

Article 47 says:

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

The explanation says that paragraph 1 of Article 47 is based on Article 13 ECHR and that paragraph 2 corresponds to Article 6(1) of the ECHR. In relation to paragraph 3, the explanations refer to the European Court of Human Rights' judgment in *Airey v. Ireland* (application No. 6289/73) in which the Court held that Article 6(1) ECHR may sometimes, depending on the circumstances, require the State to provide legal aid when such aid proves necessary for effective access to a court.

The CJEU has confirmed on a number of occasions that Article 47 is simply a reaffirmation of a pre-existing general principle of EU law (e.g. *Gaviero* (Joined Cases C-444/09 and C-456/09)). As explained in the introductory text, the Bill retains the general principles of EU law for interpretation purposes and so after exit courts will be required to interpret retained EU law consistently with the general principle reflected in Article 47, so far as it is possible to do so.

Domestic law also covers much of the same ground. The common law protects rights reflected in Article 47. The right of access to justice and to the courts is expressly recognised by the common law. In *R (UNISON) v Lord Chancellor* [2017] UKSC 51 the Supreme Court held that "the right of access to justice is not an idea recently imported from the continent of Europe, but has long been deeply embedded in our constitutional law". The common law also recognises a basic right to procedural fairness. The principles of due process and access to justice can be traced back to the Magna Carta.

Further, the right to a fair hearing is protected by Article 6 of the ECHR which is given further effect in domestic law of the UK via the Human Rights Act 1998 and

through the devolution statutes. For example, the Scotland Act 1998 gives effect to Human Rights law in relation to Scotland. The scope of the right in Article 47 is not however identical to that of Article 6 ECHR because it is not limited to the determination of civil rights and obligations or a criminal charge. Specifically in the context of detention, Article 5(4) of the ECHR ensures that an individual can challenge, and have some form of independent court determine, the lawfulness of their detention and order release if detention is no longer lawful. Article 5(4) requires that the individual must be given the guarantees of a judicial procedure appropriate to the kind of deprivation of liberty in question.

After exit domestic law and retained EU law will provide effective routes of challenge and remedies for breaches of rights which derive from EU law and which are retained under the bill. In particular, judicial review will continue to be available in respect of public law breaches of retained EU law by public bodies and specific statutory enforcement mechanisms and remedies provided for in retained EU law will continue to apply (see, for example, those provided for in the Equality Act 2010). See further the section in the introductory text headed “Enforcing fundamental rights after EU Exit”.

The Human Rights Act 1998 as a whole ensures that Article 13 ECHR is given effect in UK law, giving victims the ability to raise complaints before domestic courts, and a remedy where a breach of a Convention right has occurred, whether that breach stems from executive action, secondary or primary legislation.

ARTICLE 48 - Presumption of innocence and right of defence

Article 48 says:

- 1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.*
- 2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.*

As the explanations to the Charter say, this Article is the same as Article 6(2) and (3) of the ECHR. In accordance with Article 52(3), this right has the same meaning and scope as the right guaranteed by the ECHR.

The presumption of innocence and the right of defence are part of EU law independently of the Charter. They have been recognised as general principles of EU law in cases such as *Rubach* (Case C-344/08), *Hoffman-La Roche* Case C-85/76) and *Webmindlicences* (Case C-419/14). As explained in the introductory text, the Bill retains the general principles of EU law for interpretation purposes and so after exit courts will be required to interpret retained EU law consistently with the general principle reflected in Article 47, so far as it is possible to do so.

The ECHR is given further effect in domestic law by the Human Rights Act 1998 and through the devolution statutes. As such, the rights in Article 48 of the Charter will continue to be protected by virtue of the Human Rights Act 1998 and the devolution statutes. For example, the Scotland Act 1998 gives effect to Human Rights law in relation to Scotland.

Further, there are various EU measures in relation to the rights of suspects and accused such as Directive 2010/64/EU on interpretation and translation and Directive 2012/13/EU on the right to information. These Directives have been implemented by domestic legislation such as the Criminal Procedure Rules and through the Codes of Practice that accompany the Police and Criminal Evidence Act 1984, the right to Interpretation and Translation in Criminal Proceedings (Scotland) Regulations 2014, the Right to Information (Suspects and Accused Persons) (Scotland) Regulations 2014 and the Criminal Justice (Scotland) Act 2016. Any such domestic legislation, and related case law, will be retained by the EU (Withdrawal) Bill.

Substantive criminal law across the UK has long recognised the presumption of innocence and the right of defence, as reflected at common law and in domestic legislation. In addition, Article 6 is a Convention right and therefore the rights in

Article 48 will continue to be protected in the UK by virtue of the Human Rights Act 1998.

ARTICLE 49 - Principles of legality and proportionality of criminal offences and penalties

Article 49 says:

- 1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.*
- 2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.*
- 3. The severity of penalties must not be disproportionate to the criminal offence.*

As the explanations to the Charter say, this Article follows the traditional rule of the non-retroactivity of laws and criminal sanctions, in part reflecting Article 7 of the ECHR and Article 15 of the International Covenant on Civil and Political Rights.

The principle of legality of criminal offences and penalties ('no punishment without law') and the principle of proportionality in sentencing are general principles of EU law found in cases such as *Advocaten voor de Wereld* (Case C-303/05) and *Watson* (Case 118/75). As explained in the introductory text, the Bill retains the general principles of EU law for interpretation purposes and so after exit courts will be required to interpret retained EU law consistently with the general principle reflected in Article 49, so far as it is possible to do so. As with all rights in the Charter, Article 49 is limited and only applies to offences that give effect to EU law.

Substantive criminal law in the UK has long recognised the prohibition on retrospective punishment and the importance of imposing proportionate punishment on an offender, as reflected at common law and in domestic legislation. In addition, Article 7 is a Convention right and the prohibition on retrospective punishment will continue to be protected in the UK by virtue of the Human Rights Act 1998 and the devolution statutes.

ARTICLE 50 - Right not to be tried or punished twice in criminal proceedings for the same criminal offence.

Article 50 says:

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

As mentioned in the explanation on Article 50, the rule against double punishment has been recognised as a general principle of EU law in cases such as LVM (Case C-238/99). As explained in the introductory text, the Bill retains the general principles of EU law for interpretation purposes and so after exit courts will be required to interpret retained EU law consistently with the general principle reflected in Article 50, so far as it is possible to do so.

Protection against double punishment is however part of EU law independently of the Charter. There are numerous pieces of EU legislation in the sphere of criminal justice and policing which make provision ensuring against double punishment, such as Framework Decision 2005/214/JHA on the mutual recognition of financial penalties and the Convention Implementing the Schengen Convention (as applied to the UK under Council Decision 2000/365/EC). Where these measures have been implemented by domestic legislation this domestic legislation will be retained by the Bill. The related case law will also be retained.

Substantive criminal law across the UK has long recognised the prohibition on double punishment, at common law and in domestic legislation. Provision in the Criminal Justice Act 2003 sets out limited exceptions to the rule and accompanying safeguards, permitting retrials in respect of a number of very serious offences where new and compelling evidence has come to light. The equivalent legislation in Scotland is the Double Jeopardy (Scotland) Act 2011. The provisions for the retrial for serious offences under the Criminal Justice Act 2003 also extend to Northern Ireland.